87 1896

COPY

Supreme Court, U.S.
FILED
MAY 13 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

_____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JEROME B. ROSENTHAL, Appellant

v.

STATE BAR OF CALIFORNIA, Appellee

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

JEROME B. ROSENTHAL
Suite 800
6535 Wilshire Blvd.
Los Angeles, CA 90048
(213) 658-6411
(213) 276-9673
Appellant, in Pro Se

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JEROME B. ROSENTHAL, Appellant

v.

STATE BAR OF CALIFORNIA, Appellee

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

JEROME B. ROSENTHAL
Suite 800
6535 Wilshire Blvd.
Los Angeles, CA 90048
(213) 658-6411
(213) 276-9673
Appellant, in Pro Se

QUESTIONS PRESENTED

1. Whether Section 6083(c) of the California Business and Professions Code ("B&P Code") is facially unconstitutional as violative of the due process (14th Amendment), when highest court of State (acting as de novo tribunal[1]) is required by that statute to shift the burden of proof of his innocence to Appellant (accused, licensed lawyer), in contravention of the rulings of Sandstrom vs. Montana (1979) 442 U.S. 510 and Connecticut vs. Johnson (1983) 460 U.S. 73.

2. Whether Section 6049.1, B&P Code was unconstitutionally applied by Appellee (approved by California Supreme Court) by prejudicially admitting into evidence, in quasi-criminal disciplinary proceedings, totally extraneous hearsay "findings, conclusions, orders or judgments" of tribunals

---

[1]Worth vs. State Bar (1978) 22 C.3d 707, 150 Cal.Rptr. 273

other than those "authorized by law to conduct disciplinary proceedings against attorneys", and other than those made "in any disciplinary proceeding against the same person" (Appellant), such "misapplication" is denial of Appellant's **14th Amendment** due process rights, and **6th Amendment** confrontation and cross-examination rights.

3. Whether **B&P Code Section 6049.2** was unconstitutionally applied where the application authorizes admission into evidence (in disciplinary proceedings conducted by Appellee) of "duly authenticated transcripts of testimony of witnesses", in lieu of the actual live testimony of such witnesses before the Appellee: (Emphasis added)

> (a) Where the testimony of such witnesses (in transcript form from other proceedings) was given under

circumstances in which Appellant did not have a reasonable or adequate opportunity for cross examination of such witnesses in such other proceedings;

(b) Where the "transcript testimony" of such witnesses, from such "other proceedings", although prejudicial to Appellant, was not relevant or material to the issues before Appellee's Hearing Committee; or

(c) Where, instead of confining the portion of "transcripts from other proceedings" to the "relevant testimony of witnesses in the other proceedings" i.e. relevant to the issues before the Appellee's (Hearing) Committee, there was admitted in the Appellee's disciplinary proceedings (over objection) the entire of the Reporter's transcripts (from such other proceedings), which, in addition to

"testimony of witnesses relevant to State Bar disciplinary issues", the admitted transcripts contained the hearsay conclusions, opinions, statements of Court(s), and utterances of others, arguments of counsel, all of which were prejudicial to Appellant, (Emphasis added)

did any of such three "applications" or "uses" of that statute, constitute federally unconstitutional application, in deprivation of Appellant's rights of confrontation, of notice and hearing, of cross examination, and of due process, under the **6th, 8th, and 14th Amendments**?

4. Whether Appellant's due process rights under the **14th Amendment**, are violated by the introduction of evidence concerning "uncharged" offenses, and by Appellee's finding (Findings of Fact, No. 38 on p. 15,

contained in "DECISION" (Appendix No. 1), i.e. Appellee's recommendation accepted by California Supreme Court, of guilt or culpability of such uncharged offenses, where accused Appellant was adjudged guilty and ordered disbarred (recommendation by Appellee, administrative arm of, accepted by, California Supreme Court) because of offenses, which Appellee concedes and admits are "not specified" in the Dec. 6, 1972 Notice to Show Cause (Appendix No. 2), California equivalent of statement of charges or accusations, so that Appellant had no advance notice or opportunity whatever to prepare or present a defense.

5. Whether where Appellant's disbarment recommended by Appellee, administrative body, adopted and ordered by the California Supreme Court <u>where no (competent or lawful) evidence whatsoever</u> was utilized to support the recommendation "DECISION" that Appellant be

disbarred constitutes a violation of Appellant's rights to due process under the **14th Amendment**.

6. Whether administrative body's (Appellee's) use of a "clear and convincing evidence" standard, utilized in quasi-criminal proceeding (for disbarment of accused attorney, such as Appellant) instead of the **Winship** standard, (i.e. beyond reasonable doubt) deprived Appellant of his **14th Amendment** due process rights, where administrative body's recommendation of disbarment was adopted in final decision (Feb. 18, 1988) of State's highest court. (Appendix 3)

7. Whether the administrative arm of the California Supreme Court, i.e. State Bar, Appellee herein, by refusing Appellant's request to disqualify the biased, prejudiced (against Appellant) the evidence-taking

authors of findings (Appellee's "Committee") violates Appellant's **14th Amendment**, as enunciated in **In Re Murchison**, where such Committee was in fact so biased and prejudiced, and where its recommendation was unanimously adopted by the California Supreme Court (disbarring Appellant) in its Order of July 13, 1987, (Appendix 4) rehearing denied by the Supreme Court Feb. 18, 1988 (Appendix 3) as Final Judgment.

8. Whether Appellee and the Supreme Court of California (or either of them) in denying Appellant of opportunity (repeatedly promised to Appellant) to present documentary and testimonial evidence in his defense, is deprivation of Appellant's rights to due process and fair hearing (**14th Amendment**), where Appellant, in reliance on such repeated promises throughout the entire hearing period (about nine years), refrained from presenting evidence in his defense, and was finally

denied and refused such opportunity by the abrogation and repudiation of the promises by the tainted Hearing Committee of Appellee.

9. Whether intentional delay by Appellee (of entire 18, 10 or 7 years), in the conduct of the quasi-criminal disciplinary proceedings, resulting in prejudice to Appellant, violates his speedy trial, due process rights, under the **14th Amendment**, or his guaranty against cruel and unusual punishment, under the **Eighth Amendment**.

10. Whether Appellee's (and ultimately California Supreme Court's) reliance upon vital information, to which Appellant was denied any access, which information was "shared" by administrative (Hearing) Committee of Appellee and by Trial Examiner (Prosecutor) representing Appellee, where ultimate judgment of disbarment in part is based upon such vital "secret (as to Appellant) information" is

constitutionally impermissible, violating Appellant's right to notice of charges or accusations under the **6th Amendment** "Notice" and **14th Amendment** due process principles.

11. Whether in quasi-criminal disciplinary proceedings, Appellant was deprived of **6th and 14th Amendment** rights to compulsory process to obtain witnesses in his favor, where administrative arm (Appellee) of California Supreme Court first issued, and then cancelled (without cause) and refused to enforce its own subpoena duces tecum issued at request of Appellant, for witnesses and writings necessary to Appellant's defense.

12. Whether Appellee's Review Department deprived Appellant of **14th Amendment** due process fair hearing and equal protection rights where:

(a) Appellant was denied "evidentiary

hearing" in Review Department after its misrepresentation that "hearings" would be accorded Appellant, who detrimentally relied on the misrepresentation;

(b) Where Review Department, contrary to procedure required of, and regularly utilized by it in other cases, failed and refused to independently review the record in Appellant's case;

(c) Where Review Department acted in violation of "en banc" hearing (mandatory requirement), on which Appellant justifiably relied;

(d) Where "sham" hearing was conducted by Review Department, in that time allocated was ten minutes to review hundreds of thousands of pages to be reviewed, while in other cases, five minutes was accorded in which only hundreds of pages (or less)

of record were to be reviewed.

13. Whether Appellant's rights to fair hearing, equal protection, and due process (**14th Amendment**) are violated where consistent policy of California Supreme Court to accord great weight to "recommendations of Appellee (Hearing Panel)" because Hearing Panel had opportunity to observe demeanor and conduct of witnesses appearing before it,[2] and where same rule was applied to case of Appellant, where in fact there were no Appellee witnesses who appeared before Hearing Panel.[3]

14. Whether the fact that two justices out of

---

[2]**Spindell vs. State Bar** (1975) 13 C.3d 253, 118 Cal.Rptr. 480.

[3]In fact there were three casual witnesses, none dealing with culpability or issue or wrongdoing, called by Appellee; the entire remainder of the record (except witnesses called by Appellant, whose testimony, favorable to Appellant, was totally uncontradicted, but ignored by Appellee and by California Supreme Court) consisted of documentary evidence and other writings.

seven comprising California Supreme Court, were appointed on the eve of its hearing, with consequent physical impossibility for those two justices to have meaningfully "reviewed" the "entire record" and "all of the evidence" (because there was not possibly enough time for the two to have read the record and evidence) so as to enable Supreme Court's independent review of all evidence and record, deprived Appellant of fair hearing, due process, and equal protection rights, all under the **14th Amendment**, where California Supreme Court expressly stated that its Opinion was "unanimous" and that that Court "must independently examine the evidence."

15. Whether prosecutorial misconduct by Appellee's "Trial Examiner" (flat misrepresentations of highly prejudicial and material facts and concealment of truth) constitutes deprivation of fair trial and due process rights guaranteed by the **14th**

Amendment, where Committee's disbarment recommendation was based upon the falsity, and where State Supreme Court "adopted" unanimously.

16. Whether state's allotting to accuser (administrative arm of California Supreme Court, i.e. Appellee's Prosecutor-Examiner) over one-and one-half years (including extensions) for preparation of Opening Brief, and confining Appellant's allotted time to four months, without explanation, constitutes deprivation of Appellant's due process, equal protection, and fair hearing rights under the **14th Amendment**, especially where Appellant (due to such discriminatory action by Appellee) was prevented from filing any brief whatsoever.

17. Where evidence before Appellee (Committee) was uncontradicted that at underlying civil proceeding, Appellant and his

counsel did not have adequate or reasonable opportunity to cross examine witnesses, and where the testimony of such witnesses (from the civil proceedings) was admitted by Committee in evidence in transcript form in State Bar proceedings, over objection of Appellant, constitutes clear deprivation of due process and fair trial rights under the **14th Amendment**, and rights of confrontation and cross examination under the **Sixth Amendment**.

18. Where a statement made in argument by Appellant in his Petition for Review (to California Supreme Court) that Appellant was (**inter alia**) "caught in the system" was treated deceptively (by California Supreme Court's misleading excerpting out of context) as an admission of guilt by the California Supreme Court, whether such State action (reversing the opposite plain meaning of contended innocence to "admitted guilt")

violated Appellant's fair trial and due process rights under the **14th Amendment**.

19. Whether deliberate misconstruction (by California Supreme Court) of record, so as to erroneously pretend, mistake, and misrepresent facts concerning alleged "refusal to turn over clients' files", and "blameworthiness" for institution of bankruptcy petition, where the opposite is true, is denial of Petitioner's right to a meaningful and fair due process review (or hearing) in Court of Last Resort, under **14th Amendment**.

20. Whether action of the California Supreme Court, and of its administrative arm (Appellee) in considering as "evidence" (over Appellant's objection) the hearsay statements and opinions in "Certificates of Review" of a referee in bankruptcy (purportedly supporting offenses warranting disbarment), violates Appellant's due process, fair hearing and

equal protection rights under the 6th and 14th Amendment, where Appellant was deprived by such action of rights of confrontation and cross-examination.

21. Whether the total years of pendency (from filing of complaint to termination) of proceedings, quasi-criminal in nature, or whether component portion of 18 years consisting of approximately 4 years of delay in informing Appellant of charges against him, or whether delay of 10 years in the conduct of the actual hearings which delay was unilaterally attributable to actions of Appellee, and where, in such circumstances, Appellant's livelihood and license were taken from him, notwithstanding that Appellant had no record of any discipline in one-half century of practice, whether the combination of the delay and the harshness of the final penalty (disbarment) constituted cruel and unusual punishment in violation of Appellant's

rights under the **8th and 14th Amendments**.

22. Whether Appellee's failure to notify Appellant of the fact and nature of charges pending against him for 3 to 4 years following filing of complaint violated Appellant's rights to be informed as to charges pending against him as guaranteed by the **6th Amendment**, and to due process, fair hearing under the **14th Amendment** where Appellant was deprived of opportunity to introduce evidence and cross-examine witnesses in related civil cases because of such delay, and where parts of records and hearsay conclusions in such civil cases formed the basis for Appellee's and California Supreme Court's determination of Appellant's guilt in quasi-criminal disciplinary proceedings.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS xviii

TABLE OF AUTHORITIES xix

JURISDICTIONAL STATEMENT 1

OPINIONS BELOW 2

JURISDICTION 3

CONSTITUTIONAL PROVISIONS & RULES . . . 3

STATEMENT OF THE CASE 7

THE QUESTIONS ARE SUBSTANTIAL 24

-Timeliness. 57

CONCLUSION 61

LIST OF APPENDICES . . . . . .following p. 61

APPENDICES . . . pp. foll. LIST OF APPENDICES

TABLE OF AUTHORITIES

Page(s)

Alcorta v. Texas 355 U.S. 28 52

Application of Gault (1967)
387 U.S. 1, 33 . . . . . 36, 37

Brady v. Maryland (1963)
373 U.S. 83 51

Cardona vs. Quinones (1916)
240 U.S. 83. 60

Cole vs. Arkansas (1948) 333 U.S. 196 . . 33, 35, 40

Connecticut vs. Johnson (1983)
460 U.S. 73 . . . . . i, 6, 26

Davis vs. Alaska (1974)
415 U.S. 308 53

Davis vs. Wechsler (1923)
263 U.S. 22. 60

DeJonge vs. State of Oregon
299 U.S. 353, 362 35

Douglas vs. Alabama (1965)
380 U.S. 415, 418-420 53

Furman vs. State Bar (1938)
12 C.2d 212, 214, 229; 83 P.2d 12 . . . 25, 33

Goldberg vs. Kelly (1970)
397 U.S. 254, 271 42

Golden vs. State Bar (1931)
213 C.237, 247; 2 Pac.2d 325 33

Gray vs. State Bar (1936)
7 C.2d 177, 180, 59 P.2d 1033 25

Herrscher vs. State Bar (1935)
4 C.2d 399, 401, 49 P.2d 832 . . . . . 25, 33

Hildebrand vs. State Bar (1941)
18 C.2d 816, 834, 117 P.2d 860 25

In Re Murchison (1955)
349 U.S. 133, 136 . . . . . vii, 42, 50

In Re Oliver (1948)
333 U.S. 257, 273, 274 . . . . . 43, 45, 46

In Re Petersen (1929)
208 C. 42, 46, 53, 280 P. 124 25

In Re Ruffalo (1968)
390 U.S. 544, 551 52

In Re Shattuck, (1929)
208 C. 6, 9; 279 Pac. 998 25

In Re Winship (1970)
397 U.S. 358. . . . . vi, 36

Kwock Jan Fat vs. White (1920)
253 U.S. 454, 458-459 48

Mathews vs. Eldridge (1976)
424 U.S. 319, 330-322. 60

Miller vs. Norvell (1985)
11 Cir. 775 F.2d 1572, 1576 26

Morgan vs. United States (1936)
298 U.S. 468, 480-481 47

Ohio Bell Telephone vs. PUC (1937)
301 U.S. 292, 304-305 47

Peters vs. Kiff (1972)
407 U.S. 493, 502 42

Phillips vs. Phillips (1953)
41 Cal.2d 869, 875; 264 Pac.2d 926. 59

Pointer vs. Texas (1965)
380 U.S. 400, 405-407 53

Rosenthal vs. State Bar of California (1987)
43 C.3d 612; 238 Cal.Rptr. 377 . . . . . 1, 2

Roviaro vs. United States
353 U.S. 53, 61-62 46

Sacher v. United States
343 U.S. 1 50

Sandstrom vs. Montana (1979)
442 U.S. 510 . . . . . i, 1, 6, 26

Schullman vs. State Bar (1963)
59 C.2d 590, 599, 30 C.R. 834,
381 P.2d 658 25

Schware vs. Board of Bar Examiners
353 U.S. 232, 246-247 35

Thompson vs. Louisville (1960)
362 U.S. 199, 206 34

U.S. vs. Gomez (1965)
70 U.S. 752. 60

Van Tiger vs. Superior Court (1936)
7 Cal.2d 277, 60 Pac.2d 851. 58,59

Washington vs. State of Texas (1967)
388 U.S. 14, 18 46

Werner vs. State Bar (1939)
13 C.2d 666, 673, 91 P.2d 881 25

Wilde v. Wyoming
362 U.S. 607 52

Willner vs. Committee (1963)
373 U.S. 96, 105 . . . . . 48, 50, 52

Zitny vs. State Bar (1966)
64 C.2d 787, 789, 51 C.R. 825,
415 P.2d 521 25

STATUTES

Business & Professions Code

Section 6049.1 . . . . . i, 4, 27

Section 6049.2 . . . . . ii, 5, 29

Section 6083(c) . . . . i, 1, 4, 6, 26, 27

U.S. Constitution

28 U.S.C. Section 1257(2) 3

14th Amendment, i, ii, iv, vi, vii, viii, ix, xi, xii, xiii, xiv, xv, xvi, xvii, 1, 4, 28, 31, 33, 34, 37, 39, 40, 43, 46, 48, 50-52, 54-56, 60

5th Amendment, 60

6th Amendment, ii, iv, ix, xiv, xvi, xvii, 3, 28, 31, 34, 39, 40, 44, 46, 55, 56

8th Amendment, iv, viii, xvii, 4, 32, 45, 56

MISCELLANEOUS

Rule 27(e). 59,60

Witkin, California Procedure, Third Edition, Section 63, p. 497. 59

Witkin, California Procedure, Third Edition, Attorneys, Section 477 34

Witkin, California Procedure, Third Edition, Attorneys, Section 511 25

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JEROME B. ROSENTHAL, Appellant

v.

STATE BAR OF CALIFORNIA, Appellee

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

JURISDICTIONAL STATEMENT

JEROME B. ROSENTHAL, Appellant, appeals from the Feb. 18, 1988 final Judgment of the Supreme Court of California, denying Petition for Rehearing (Appendix 3) of Opinion styled **Rosenthal vs. State Bar of California** (1987) 43 C.3d 612; 238 Cal.Rptr. 377, rejecting Appellant's constitutional attack that California statute (**B & P Code Section 6083(c)**) is facially unconstitutional under the **14th Amendment** due process clause because it casts the burden of proof of innocence upon the Appellant (accused lawyer), which action (casting the burden of proof of innocence upon accused lawyer) can never be harmless, either on the ground that intent was not at issue, or that **Sandstrom** error could be harmless on the ground of "overwhelming evidence".

OPINIONS BELOW

The Order of Feb. 18, 1988 (Final Action) of the Supreme Court of California, denying Appellant's Petition for Rehearing appears as Appendix No. 3.

The Opinion of the Supreme Court of California, **Rosenthal vs. State Bar** is reported at 43 C.3d 612, 238 Cal.Rptr. 377, 738 P.2d 723 (1987). (To conserve bulk, the Opinion is not reprinted in Appendix.)

The findings and recommendation of Appellee (Local Administrative Committee No. 53), the administrative arm of the Supreme Court of California, dated December 17, 1985 transmitted and filed January 3, 1986 are not reported. These findings and recommendations (called "DECISION") of that Administrative Committee of the Appellee State Bar, are in Appendix No. 1.

JURISDICTION

The final judgment (entered Feb. 18, 1988, Appendix 3) of the Supreme Court of California denying Appellant's Petition for Rehearing of its previous Opinion disbarring Appellant entered on July 13, 1987, effective August 12, 1987. See **Timeliness**, p. 57,et.seq.

A Notice of Appeal to this Court from that Final Judgment was timely filed in the Supreme Court of California on Feb. 29, 1988 (dated Feb. 25) (Appendix 5).

This appeal is being docketed in this Court within 90 days from the denial of rehearing below. See **Timeliness**, p.57,et.seq.

The jurisdiction of this Court is invoked under **28 U.S.C. Section 1257(2)**.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Sixth Amendment, U.S. Constitution:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory

process for obtaining witnesses in his favor . . . ."

Eighth Amendment, U.S. Constitution:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

14th Amendment, U.S. Constitution, Section 1:

". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Business and Professions Code, Cal Statute, Section 6083(c):

"Time For Review"

"(c) Upon such review the burden is upon the Petitioner to show wherein the decision or action is erroneous or unlawful."

Business and Professions Code Section 6049.1- Records and Transcripts in Disciplinary Proceedings As Evidence:

"In all disciplinary proceedings in this State, certified or duly authenticated copies of findings, conclusions, orders or judgments made or entered in any court of record, or any body authorized by law

or by rule of court to conduct disciplinary proceedings against attorneys, of the United States, or of any State or Territory of the United States or of the District of Columbia in any disciplinary proceedings therein against the same person, shall be admissible in evidence, and so far as relevant and material shall be prima facie evidence of the facts, matters and things set forth therein."

"The duly authenticated transcript of the testimony taken in such out-of-state proceedings shall be admissible in evidence in any disciplinary proceeding against the same person in this State . . . ."

Business and Professions Code, Section 6049.2:

"In all disciplinary proceedings pursuant to this chapter, the testimony of a witness given in a contested civil action or special proceeding to which the person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, may be received in evidence, so far as relevant and material to the issues in the disciplinary proceedings, by means of a duly authenticated transcript of such testimony and without proof of the non-availability of the witness; provided, the board or administrative committee may order the production and testimony by such witness, in lieu of or in addition to receiving a transcript of his testimony and may decline to receive in evidence any such transcript or testimony, in whole or in part, when it appears that the testimony was given under circumstances that did not require or allow an opportunity for full cross examination."

Appellant's claim of the facial unconstitutionality of the California Statue [Business and Professions Code, Section 6083(c)] was presented extensively before the court of last resort (Supreme Court, California) and Appellant, prior to deliberations of California Supreme Court, transmitted to that Court copies of the opinions of This Court in the cases of Sandstrom vs. Montana (1979) 442 U.S. 510; 99 S. Ct. 2450; 61 L. Ed. 2d, and Connecticut vs. Johnson (1983) 460 U.S. 73; 103 S. Ct. 969; 74 L. Ed. 2d 823, and thus, Appellant fully exhausted the Federal jurisdictional question in the court of last resort of California.

Appellant had previously raised federal constitutional questions (as in "**QUESTIONS PRESENTED", supra**) during Appellee's (Committee) conduct of disciplinary proceedings, and during Appellee's Review Department's "hearing", and in motions before Committee and Review Department. Appellant's

attacks were rejected by Appellee (Committee and Review Department), and finally by California Supreme Court.

STATEMENT OF THE CASE

The Appellant, JEROME B. ROSENTHAL, admitted to the practice of law in Illinois in 1936, in California in 1946, has lived and practiced in Los Angeles County, California since 1946.

In December, 1968, following the death of Martin Melcher, April 20, 1968), his widow Doris Day Melcher and her son, Terrence P. Melcher, filed complaint against Appellant with the State Bar of California. (Appellant was not permitted to, and did not see the Complaint itself until 18 years later, i.e. 1986), after completion of all evidentiary hearings, and Appellee's recommendation (culpability, disbarment) was made.

In January, 1973 the Local Administrative Committee No. 2, of Appellee (STATE BAR), issued and served upon Appellant its "NOTICE

TO SHOW CAUSE" notifying Appellant (for the first time) of the specific charges against him; Notice was by its terms returnable before the (Appellee) Local Administrative Committee No. 53. The accusations contained in the Notice To Show Cause ("NSC") were that Appellant, who had represented Martin Melcher (deceased), his widow, Doris Day Melcher, since in or about 1956, and later represented Terrence Paul Melcher (son of decedent and widow) individually and as administrator of estate of Martin Melcher, Deceased, alleged that Appellant unreasonably delayed returning Melcher records, refused to make an accounting; that it was necessary for Doris Day Melcher to have a receiver appointed in order to get her books, records and files; that Appellant filed Petition To Remove Terrence P. Melcher as Administrator without substantial basis, and for purpose of harassing; that Appellant's refusal to furnish files and records to Melcher,

substantially prejudiced Melchers' ability to assess the validity of creditor's claims asserted against them and impeded their ability to defend against lawsuits that Appellant caused to be filed against them; that Appellant caused a bankruptcy proceeding to be filed in Dallas, Texas without "requisite statements and schedules" and failed to file timely Schedules as requested by Bankruptcy Court; that plan of arrangement filed by Appellant was a sham and filed in bad faith, interposed only to delay Bankruptcy Court's disposition on merits; that Appellant caused to be filed exaggerated creditors' claims, in the Bankruptcy proceeding, so that Melchers' plan of arrangement was deprived of the requisite "majority approval" as to the amount of claims, and that Melchers' plan was thus prevented from being confirmed; that for a period of several months in 1969, Appellant obstructed the proceedings in the Dallas bankruptcy case through misrepresentations

made in the case; that Appellant engaged in certain conduct in Dallas case to delay commencement of the trial; that during trial in the Dallas case, Appellant obstructed the proceedings; that Appellant testified that his law firm had not received payments for services rendered to Dallas Hotel, while, in fact, his law firm had received fees from Dallas Hotel for services to Dallas Hotel; created and pursued interests which were adverse to interests of client Melchers; that Appellant was overpaid by entities in which client's owned interests; that Appellant improperly refused to be deposed in an action in which Melchers were among the defendants; that Appellant advised Administrator Melcher to authorize making of certain payments, some of which payments were beneficial to interests of Appellant, which was not revealed to Administrator client; that Appellant instituted numerous lawsuits for the sole purpose of harassing former client; that

Appellant served Melcher clients in connection with purchase of Federal Bonds with borrowed funds, while Appellant purchased same kind of bonds for himself, but paid less interest on borrowed funds than interest paid by Melchers.

Each and all of the accusations made in the above stated charges (in NSC) were and are categorically and unequivocally denied by Appellant, both in his Answer to NSC, and thereafter, throughout all proceedings.

The relevant facts that led to the accusations contained in the Notice To Show Cause ("NSC") are summarized as follows:

(1) Appellant and his law firm(s) represented Doris Day Melcher and Martin Melcher commencing in mid-1950s. The services performed for the Melchers were of a type which was then unique, and now commonplace, particularly in the fields of entertainment, communication and professional sports; those services were "ongoing" and rendered virtually daily by Appellant, his firms and personnel.

Services included financial advice and administration, opinions as to financial and tax planning, maintenance of records of transactions, and preparation of documents in connection with transactions contemplated and consummated; with associated and related activities.

(2) In 1963, Appellant individually (after three years of invitation and persuasion from Martin Melcher) entered into an arrangement/agreement with Martin Melcher in which Appellant was to act as chief executive or operating official of the "Melcher empire" (Mr. Melcher's designation), substantially curtailed his personal activities as an attorney in his law firm; Appellant agreed at request of Martin M. Melcher to make investments and share (along with Martin M. Melcher) in benefits and proceeds of some phases of "empire". The empire resulted from the flourishing of the

respective individual incomes of the two Melchers, (hers as actress, etc., his as theatrical producer, personal manager, publisher, etc.) and from the activities of Appellant's firm on behalf of the Melchers and related companies. Since the inception of Appellant's firms' representation of Mrs. Melcher, she referred and delegated all business authority and directed all persons approached her on business matters, to her husband Martin. She professed and manifested limited interest in discussing or considering her financial affairs upon occasions when Appellant or Appellant's firms attempted to or did in fact discuss her business affairs with her, saying, in substance, "I'm the actress, see my husband about business affairs."

(3) In agreeing to undertake the duties as the "chief operating official" of the Melcher empire, Appellant relied upon the commitments of both Melchers (he had her Power

of Attorney and unlimited authority), to supply any necessary funding of operations of elements of the "empire plan." Under that Empire Agreement (1963), Appellant (and personnel supplied by his law firm) were to render services in conducting active operations, and in supervising ongoing business enterprises, their pursuit and expansion. But prior to the 1963 "Empire Agreement" the services of Appellant and his law firms were restricted to only passive financial interests and investments of the Melchers.

(4) The objectives of the Melchers (developed, refined and originated by Mr. Melcher, with assistance of Appellant and his law firm), and the methods of tax planning incident to carrying out of the "Empire Plans" were all highly tax-oriented as well as profit-oriented, with increasing intensity during the years from 1956 through 1968 (and

thereafter, but for the unfortunate demise in April, 1968 of Mr. Melcher).

(5) The empire plan was designed by Mr. Melcher (as were other preceding and related plans for his and his wife's investments and the use of various funds) to postpone the imposition of income taxes to the extent lawfully possible, and to postpone receipt of additional income (other than that necessary or incident to maintenance of the needs of the empire plan) until their incomes from their activities in the theatrical and related fields diminished. In short, all of the investment and related financial activities were designed with "long-term objectives"; it was never the intention of Martin Melcher ("empire's" architect) that operations were to be "abruptly terminated". His plan was that ultimate disposition and liquidation of the "empire plan" were steps to be taken only when financially propitious, as for example, "going

public", making "non-taxable re-financing", selling the empire assets or some of them, after they had substantially appreciated in value and after tax benefits incident to their retention had significantly diminished or depleted.

(6) Following the tragic demise of Martin Melcher, Appellant, his law firm and related companies attempted to carry out the brilliant and prophetic planning of Martin Melcher consistent with his "empire plan"; Appellant and his law firm(s) were seeking to insure that benefits of Melcher's "empire plan" would be enjoyed by Mrs. Melcher, by the estate of Martin (decedent) and through the estate, by persons interested in it, its creditors, and by Appellant, his law firm and related companies, all as intended by Mr. Melcher in the conceiving, devising and implementing and setting into motion the various elements of the "empire plan",

consistent with the underlying investment philosophy of Martin in other Melcher investments.

(7) Until Martin Melcher's death, Doris Day Melcher had consistently and expressly avoided any participation or willingness to consider any business or financial matters [Supra, p. 14 paragraph (2)]. Unaccountably, immediately upon the death of Martin, Mrs. (Doris Day) Melcher abruptly reversed her position. Notwithstanding the reliance by others that she had induced and invited to rely on her Husband's authority in committing her, she repudiated the authority and attacked transactions made in reliance upon it. (Appellant later learned that conceivably Doris Day Melcher was not to be "blamed" for that abrupt repudiation, since she was acting upon her then reliance on the advice of newly engaged counsel and other advisors who represented her and her son, Terrence P.

Melcher (co-complainant in disciplinary proceedings, along with her) following Mr. Melcher's death and following discharge of Appellant and his law firm in May and July, 1968.

(8) Following their discharge by Doris and Terrence P. Melcher (son of decedent and Mrs. Melcher, in his individual capacity and in his capacity as administrator of decedent) Appellant commenced or caused litigation in Los Angeles Superior Court against Doris Day Melcher, Estate of Martin Melcher, Terrence P. Melcher, et al., (collectively "Melcher parties") seeking, inter alia to recover (a) fees to which Appellant and his firm were entitled, (b) to recoup advances made by Appellant, et al., (c) seeking to enforce Melcher parties' continued funding, when necessary, of the "empire" and (d) seeking damages, consistent with Melcher parties' commitments. The Melcher parties cross-

complained in one action and instituted a separate action against Appellant, et al. The allegations in the separate action paralleled those contained in the cross-complaints and answers by Melcher Parties, in the twelve suits instituted by or through Appellant against Melcher parties. The thirteen (13) suits, consolidated, went to trial before Hon. Lester E. Olson, Los Angeles Superior Court on March 4, 1974. Evidentiary proceedings ended September 18, 1974 (ninety-nine Court days); judgment entered against Appellant et al., in their respective positions as Plaintiffs seeking affirmative relief, and also in favor of Melchers on their cross-complaints against Appellant, et al, as Cross-Defendants.

(9) In addition to those Los Angeles suits, Appellant and related parties instituted or caused suits in New Mexico, Oklahoma and Texas, in connection with the interests of the Melchers and others,

including Appellant, et al. The "new attorneys" of Melcher parties, in the Fall of 1968, demanded that Appellant participate in the authorizing, preparation and filing of a Chapter 11 "arrangement" proceeding in Texas (Bankruptcy Court) designed to prevent foreclosure or other creditor actions against Dallas Cabana Hotel property. Appellant resisted on the ground that such action would be unnecessarily destructive of value of the property, would constitute an impermissible reversal of the "empire plan" and a repudiation of commitments made by the Melchers pursuant to it, and for related reasons. Under protest, and under threat (by Melcher parties' new attorneys) of being "held responsible" if the Hotel property were lost by foreclosure, Appellant engaged Texas counsel who filed Chapter 11 petition. That insistence by surviving Melchers on such an improvident and misguided course of action was directly contrary to the "empire plan" and was

by its very nature unnecessarily destructive and sacrificial. The Melchers and their new attorneys caused virtual economic suicide, as later events established.

(10) In or about 1970, incident to the Dallas Bankruptcy, the two hotels in which the Melcher parties owned a substantial interest were sacrificially sold for approximately $7-3/4 million, less costs of administration, and other legal fees and expenses, estimated at $500,000.00 or more. The sale of the two hotels thus produced a net yield of $7-1/4 million, or less, for both hotels. Those very self-same hotels were professionally evaluated in 1974 at $25 million dollars and, in 1986, at $50 million. During the interim the two hotels could readily have been operated (consistent with the empire plan of decedent, Martin Melcher) as profit-yielding, self-sufficient enterprises, or with decreasing need for supplemental funding from other

sources, all as anticipated by Mr. Melcher's "empire plan."

(11) The "empire" also contained a substantial interest in 80,000 acres of mineral leases. In 1965, 10,000 acres (1/8 of the total) were sold, as decided by Mr. Melcher, to Texaco for $1 million ($100.00 per acre), less adjustments of about $150,000.00, plus a retained fractional interest, the value of which is safely estimated to equal or exceed the "adjustment" amount. At the time of this transaction, the prevailing oil price was $\pm$ $3.00 per barrel.

In 1965, if the sale of the remaining 70,000 acres were made at the 1965 price, when prevailing price was $3.00 pr./barrel, the yield of such transaction would have been $7 million.

The 1974/75 value, if sale of those remaining acres were made when the prevailing oil price was $30.00 pr./barrel, would have

yielded $70 million.

In the interim (1965-1975) or post 1975 value, of the sale of remaining 70,000 acres, when the prevailing oil price was $10.00 pr./barrel, would have yielded $21 million.

(12) In 1968, following Mr. Melcher's death, the Melcher parties (following advice of new attorneys) refused to pay from sources which decedent Mr. Melcher had anticipated and committed, the nominal "holding" or "delay" rentals, with the end result that the remaining valuable mineral leases were lost by simple abandonment and reversion, and thus rendered worthless to the Melcher parties, estate, other interested parties (including Appellant) and others reliant upon commitment of Melchers. The nominal rentals were approximately $1,500 per month, or not to exceed $20,000 per year. Thus, surviving Melcher parties, acting on advice of new attorneys, lost their interest in properties

(mineral leases) which had a value ranging from $7 million to $70 million.

(13) In sum, the values lost in the two hotels and in the mineral leases ranged from $25 million to $113 million, due entirely to the advice of "new attorneys", and surviving Melchers' understandable reliance upon it; new attorneys fees and charges exceeded $2 million. Incident to that Melcher-loss result Appellant, his law firm(s), and others who relied on "Melcher Plan" commitments made by decedent Melcher (fully authorized), lost millions in unpaid compensation earned, in unrecouped advances and charges, and in the value(s) of their interests in the "sacrificed" properties alone.

THE QUESTIONS ARE SUBSTANTIAL

(Numbers in this Section correspond to numbers used in "QUESTIONS PRESENTED" Section, supra)

1. The California Supreme "Court examines the

entire record, weighs the evidence, and makes an independent determination and order imposing discipline or dismissing the proceeding." Witkin, California Procedure, Third Edition, Attorneys, Section 511, citing: In Re Shattuck, (1929) 208 C. 6, 9; 279 Pac. 998; In Re Petersen (1929) 208 C. 42, 46, 53, 280 P. 124; Furman vs. State Bar (1938) 12 C.2d 212, 214, 83 P.2d 12; Werner vs. State Bar (1939) 13 C.2d 666, 673, 91 P.2d 881; Gray vs. State Bar (1936) 7 C.2d 177, 180, 59 P.2d 1033; Herrscher vs. State Bar (1935) 4 C.2d 399, 401, 49 P.2d 832; Hildebrand vs. State Bar (1941) 18 C.2d 816, 834, 117 P.2d 860; Schullman vs. State Bar (1963) 59 C.2d 590, 599, 30 C.R. 834, 381 P.2d 658; Zitny vs. State Bar (1966) 64 C.2d 787, 789, 51 C.R. 825, 415 P.2d 521.

Thus, in California disciplinary matters, the function of the Supreme Court of California is tantamount to a de novo determination, independently considering the

entire record and independently weighing all of the evidence. In the prevalent situation in California, 6083(c) (Business and Professions Code, supra) is facially unconstitutional because, in a proceeding tantamount to a trial, that statute imposes the duty upon the accused in a quasi-criminal proceeding, to establish his innocence, rather than requiring the Appellee (accuser) to establish Appellant's (accused attorney) guilt of charged violations.

Appellant (as Petitioner in California Supreme Court) both in oral argument and in written submissions, attacked the federal constitutionality of statute (B&P Code) Section 6083(c) on doctrinal grounds enunciated in Sandstom vs. Montana (1979) 442 U.S. 510 and in Connecticut vs. Johnson (1983) 460 U.S. 73, as being "void on its face". Please also see Miller vs. Norvell (1985) 11 Cir. 775 F.2d 1572, 1576.

California, our most heavily populated

state, also has the greatest number of attorneys (per capita or in absolute number). All of those attorneys are, as a matter of law, subject to the disciplinary authority of Appellee, and to the statutes providing for de novo-like review (in the California Supreme Court), inherent in Section 6083(c). In effect, the greatest number of attorneys (in any state) in the United States are subject to and have their respective licenses and livelihoods governed by a facially unconstitutional statute requiring such attorneys (like Appellant) to bear the burden of disproving statutorily presumed wrongdoing.

2. B&P Code, Section 6049.1 (full text, supra, under heading "CONSTITUTIONAL PROVISIONS, STATUTES AND RULES") provides clearly for the admissibility as evidence, in the disciplinary proceeding before the Appellee (Committee of the State Bar) of "findings, conclusions, orders or judgments",

purely hearsay in nature, made in any other Court or body authorized to conduct disciplinary proceedings. Here, over repeated and constant objection (and in repeatedly unconstitutionally applying that statute) the Committee admitted into evidence "findings, conclusions, orders or judgments", purely hearsay in nature which were made in course of tribunal which were not authorized or which were not in fact conducting disciplinary proceedings. In so doing, the Appellee, with the approval of the California Supreme Court on the point, deprived Appellant of the right of confrontation, the right of cross examination, and the right of notice of charges or accusations, under the 6th Amendment and the 14th Amendments, U.S.. It is an unthinkably and flagrantly unconstitutional application of the thrust of the statute in question when one considers the quantity of lawyers subjected to it and the frequency in which the question arises. The

number of disciplinary cases keeps rising in California, along with the number of attorney licensees.

3. Section 6049.2 California statute (Business and Professions Code) authorizes admission into evidence in disciplinary proceedings by Appellee, of "duly authenticated transcripts of testimony of witnesses" (emphasis added), in lieu of the actual live testimony of those witnesses before the Appellee's Committee of Hearing Panel), except where the testimony (in transcript form from other proceedings) was given under circumstances in which accused attorney, in other proceeding (generally civil) did not have a reasonable and adequate opportunity for cross examination of those witnesses in those "other proceedings", and of course where the "transcript testimony" of those witnesses was not relevant to the issues

before the Appellee's Committee.[4]

In the instant case, that statute was unconstitutionally applied in all three respects. First, there was before the Committee totally unrebutted or uncontradicted testimony that there was not a "reasonable and adequate opportunity for cross examination". Second, the transcripts admitted in evidence, over strenuous and repeated objection, (99 in number, consisting of over 15,000 pages) contained, in the main, hearsay statements of the Court(s) in question, comments and conclusions made from the bench, arguments of counsel, highly prejudicial comments (against Appellant) collectively herein "extraneous

---

[4]The term "Committee" and "Hearing Panel" are used interchangeably on some occasions. Actually, in the subject disciplinary proceeding the body in question was specifically called "The Committee", but the California Supreme Court in its Opinion preferred to use to so-called "more modern" phrase "Hearing Panel". It is significant that the body in question was actually a "Committee" - see Appendix No. 1, (the recommendations called "Decision" of such Committee), Page 1 thereof.

material". Third, the extraneous material was admitted over objection; these three areas of unconstitutional application of that statute present extremely substantial questions because inherent in all three types of misuse are deprivations of the rights of cross examination (6th Amendment), confrontation (6th Amendment) and of notice and hearing rights (due process, 14th Amendment). Traditionally, disciplinary complaints and procedures arise from situations in which the accused attorney allegedly conducted himself unethically, almost invariably in connection with some litigation in which he represented a client. Therein lies the "other proceeding" situation to which the subject statute refers. Thus, in a justifiably assumed majority of disciplinary proceedings, the accused, by virtue of this unconstitutionally applied statute, is literally deprived of the constitutional rights asserted with respect to Appellant immediately above. The same

objections obtained as those which obtained in the instance of the "companion statute", i.e. those referred to in Paragraph 2 immediately above. Further, because of the severity (deprivation of their property right of the license to conduct a professional livelihood) of the punitive consequences, the application of this statute also is a deprivation of the right against "cruel and unusual punishment" under the **8th Amendment, U.S.**.

4. Appellant was deprived of due process by admission into evidence (over objection) of uncharged offenses and by a finding of conclusion of guilt or culpability of such uncharged offenses. This violation is explicit in the instant situation because the actual "recommending document" called "Decision" (Appendix 1) of the Local Administrative Committee No. 53 (of Appellee, arm of the California Court of Last Resort). Page 15 of the **"DECISION"** states in pertinent

portion (Line 13) "in addition to the matters alluded to above, the evidence also permits the finding that Respondent (Appellant here) committed other offenses not specified in the NOTICE TO SHOW CAUSE." (Emphasis added). In this situation, this Court found that introduction of such evidence and such a finding or conclusion of guilt based thereon violated due process rights under the 14th Amendment, in Cole vs. Arkansas (1948) 333 U.S. 196 where, at Page 201 this Court stated:

> "No principle of procedural due process is more clearly established than that notice of specific charge, and the chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all Courts, state or federal."

Of course, it is undisputed and now well-settled that the subject disciplinary proceedings here concerned constitute or are in fact "quasi-criminal" in nature. Golden vs. State Bar (1931) 213 C.237, 247; 2 Pac.2d 325; Furman vs. State Bar (1938) 12 C.2d 212, 229; 83 Pac.2d 12; Herrscher vs. State Bar

(1935) 4 C.2d 399, 403, 421; 49 Pac.2d 832.

The substantiality of this question is further illustrated by this observation:

> "The attorney whose professional license is challenged has as much at stake as the defendant in many a criminal prosecution, and should be similarly protected in the trial of serious charges."
> **Witkin, California Procedure, Third Edition, Attorneys** Section 477, pp. 526-527.

5. In the case at hand, there was absolutely no legal or competent evidence in the record to support Appellant's guilt of the charges. Applying the "no evidence" criterion of **Thompson vs. Louisville** (1960) 362 U.S. 199, 206, since there is no support in the record (i.e. no evidence), the order or judgment of disbarment is void as a denial of due process right as guaranteed by the **14th Amendment**[5]. Appellee called and used witnesses only tangential to, but not on the merits (guilt or

---

[5]Denials of Rights: Confrontation and cross-examination (6th Amendment); uncharged offenses (due process, 14th Amendment)

innocence of Appellant); absolutely no witnesses whatsoever were called to prove "guilt or innocence" merits; instead, hearsay documents containing expressions of opinion, conclusions, arguments, from other states and other proceedings (not in any respect from the disciplinary proceeding in question itself) comprise the entirety of the "accuser's" (Appellee's) evidentiary case against Appellant. "Just as 'Conviction upon a charge not made would be sheer denial of due process' (citing **DeJonge vs. State of Oregon** 299 U.S. 353, 362; and **Cole vs. Arkansas** 333 U.S. 196, 201) so is it a violation of due process to convict and punish a man without evidence of his guilt," citing **Schware vs. Board of Bar Examiners** 353 U.S. 232, 246-247; where there is no evidence of guilt, accused cannot be convicted or punished because the "conviction" is void under due process rights.

6. Because of the deprivation of profound

fundamental personal right (right to livelihood, and to practice profession) involved in disciplinary proceedings (undisputedly "quasi-criminal" in nature), the standard of proof required for such deprivation (ascertainment of guilt) must be consistent with due process, requiring proof beyond a reasonable doubt, as to each and all of the elements of the accusation.

In Gault, this Court held "due process of law requires notice of the sort we have described - that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding." Application of Gault (1967) 387 U.S. 1, 33; In re Winship (1970) 397 U.S. 358.

In Winship, supra, this Court referred to its decision in Gault, supra:

> "We made clear in that decision that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts, for 'a proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in

seriousness to a felony prosecution'". Application of Gault (1967) 387 U.S. 1, 36.

The question of the "applicable standard of proof" is an extremely substantial question postulated here; the incidence (quantitative) of disciplinary situations is widespread, the "deprivation" at stake is profound and fundamental (right to livelihood, right to practice profession which constitutes lifetime study and application, etc.).

7. Appellee's hearing Committee, by its extreme bias and prejudice, violated Appellant's 14th Amendment due process rights, as illustrated by this conduct or omission by the Committee (the recommendations for disbarment of which Committee were adopted by Appellee Review Department, and by California Supreme Court):

(a) Years of repeated assurances were made by Committee that Appellant would be "always" (at any time during, at the end of,

or after the hearings) given the opportunity to fully put on his defense, to call, subpoena and cross-examine witnesses, and "at any time" to remake or make motions to strike incompetent prejudicial testimony pursuant to agreed "running objection". But without cause, reason or explanation the Committee abrogated all of those promises and assurances, on which Appellant had relied, thus depriving him of all of his constitutional rights inherent in his defenses to the accusation;

(b) After first stating and assuring Appellant that the Committee would not read, use or admit hearsay or otherwise incompetent transcripts from "civil trials", or testimonial portions thereof, unless and until Appellant had an opportunity to read and consider in advance the <u>selected relevant portions</u>, the Committee again without explanation, cause or reason abruptly reversed itself, abrogated its assurances to the

contrary, admitted on its own motion some 15,000 pages of "civil trial transcript" (99 volumes), directly in contravention and repudiation of its promises to the contrary, as well as directly in violation of all due process rights and including the **6th Amendment** rights to confrontation and cross examination, rights of compulsory process, the right to be informed (notice), and deprived him further of due process rights guaranteed and embraced by the **14th Amendment**;

(c) The Committee in its recommendation of disbarment, determined that Appellant was culpable or guilty of infractions regarding named "clients", when the persons in question were simply (and undisputedly) not clients of the Appellant at the time in question;

(d) The Committee expressly stated in its written recommendations of disbarment (adopted by California Supreme Court) that Appellant had "committed other offenses" which were specifically not mentioned in the accusing

document ("Notice to Show Cause"), in clear defiance of the teachings of **Cole vs. Arkansas** (1948) 333 U.S. 196, and in blatant deprivation of "Notice and Hearing" rights under the **6th Amendment** and under the due process concepts of the **14th Amendment**;

(e) The Committee further clearly manifested its extreme bias and prejudice by including within its recommendations totally insupportable and unsupported accusations against the Appellant, arising from total hearsay sources, including but not limited to out of state civil actions related and unrelated to the disciplinary proceeding; in its written recommendation the Committee further displayed its extreme bias and prejudice by accusing Appellant (without any notice and hearing and certainly without any evidentiary support) of objectionable conduct, without any facts or competent evidence. In this instance, the Committee merely gave vent to its prejudice by expressions of extreme

disfavor, in the ultimate recommendations of guilt and of discipline, but gave Appellant absolutely no explanation or opportunity to meet the charges upon which (in this instance) it rested its severe recommendations.

(f) In addition, without here detailing each of the many other manifestations of bias and prejudice, also demonstrated that animus by depriving Appellant of opportunity to present evidence in his own defense, by depriving him of the right of compulsory process in a most important incident in which it issued its own subpoena duces tecum only to later abrogate, quash it on its own motion, and totally disregard and refuse to enforce it; allocating to Appellant some three or four months for "briefing", but permitting or allocating the adversary (Appellee herein) over one and-one-half years (without explanation of justification), read and considered secret documents, shared the secrets with Appellee's Trial Examiner with

any evidence, but concealing the content of the document(s) from Appellant.

It is well-settled that a fair trial in a fair tribunal is a basic requirement of due process. **In re Murchison** (1955) 349 U.S. 133, 136. Due process requires a competent and impartial tribunal in the administrative hearings. **Goldberg vs. Kelly** (1970) 397 U.S. 254, 271. Even if there is no showing of actual bias in the tribunal, due process is deemed to be denied by circumstances that create the likelihood or appearance of bias. **Peters vs. Kiff** (1972) 407 U.S. 493, 502. As this Court stated in **In re Murchison**, supra, 349 U.S. at page 136:

> "Fairness of Courts requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness."

8. Although arising from the same conduct as the corresponding acts of the Committee described immediately above in Paragraph 7, the Committee (Appellee) and the Supreme Court

of California deprived Appellant of his due process fair hearing rights under the **14th Amendment** where Appellant justifiably relied on repeated promises throughout the entire period of some nine years of hearings, made by the Committee, refrained from presenting evidence in keeping with such reliance, and was ultimately and abruptly refused the promised opportunity and right to present evidence in his defense, by the Committee's abrogation and repudiation of the repeated promises.

This Court has held:

> "We further hold that failure to afford the petitioner a reasonable opportunity to defend himself against the charge. . . .was a denial of due process of law. A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in Court - are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony. . .". (Emphasis added)
> **In re Oliver** (1948) 333 U.S. 257, 273, 274.

9. Whether the intentional unilateral delay

by Appellee was 18 years (or 10 years, or only 7 years) for the pendency and conducting of the disciplinary proceeding, such a delay (estimated years are net, after deduction of any request for continuances made by Appellant for reasons of health or schedule conflicts), such protraction presents at least two very substantial questions. First, since the transactions and events with which the disciplinary proceedings were concerned were as old as thirty years, i.e. from the middle 1950s, to the conclusion of Appellee's conducted proceedings, 1985 - 1986, obviously no fair hearing for Appellant could result. Witnesses died, witnesses became "unlocateable", memories faded, and in some instances documents became unavailable or lost. Secondly, in these quasi-criminal proceedings, there is the very substantial question of compliance with the "speedy trial" requirement of the 6th Amendment, presented by such delay. Finally, the duration and

continued, uninterrupted pendency of such oppressive action (disciplinary proceeding itself) hanging over the head of Appellant is, "ordeal enough" or "punishment enough", as well as constituting "cruel and unusual" punishment under the 8th Amendment. The substantiality of these questions and subquestions is enhanced in the instant situation where Appellant has persistently maintained his absolute innocence, and denied any guilt whatsoever.

10. The right of the accused (Appellant) to know of the nature of the charges against him is a profoundly substantial and inalienable right; that right has been flagrantly violated and contravened by the acts of Appellee and California Supreme Court in refusing Appellant the right to see the "secret information" writing which Appellee and its Trial Examiner "shared" (to the exclusion of Appellant), to the prejudice of Appellant. See In re Oliver

(1948) 333 U.S. 257, 272-274. As stated in **Oliver**, this inalienable and fundamental right is protected by the due process clause of the **14th Amendment**. See also, **Roviaro vs. United States**, 353 U.S. 53, 61-62.

11. Appellee denied Appellant the right and opportunity to use compulsory process to obtain evidence of his defense. "The right of an accused, in quasi-criminal proceedings, to have compulsory process for obtaining witnesses in his favor stands in no lesser footing than the other 6th Amendment rights that we have previously held applicable to the States." **Washington vs. State of Texas** (1967) 388 U.S. 14, 18, citing **In Re Oliver** (1948) 333 U.S. 257.

12. Appellee (Review Department) deprived Appellant of substantial rights to due process and to equal protection, guaranteed by **14th Amendment**, by denying Appellant an

"evidentiary hearing" (after a representation that "hearings" would be accorded Appellant), refused to independently review the record in Appellant's case (although it was required to do so by applicable Rules, and consistent with its uniform practice in other cases) in adopting (without change) recommendations of Committee that Applicant be disbarred. The Review Department also acted in violation of "En Banc Hearing" (mandatory requirement) in adopting recommendations of Committee for disbarment; and Review Department (of Appellee) allocated to Appellant only ten minutes of time within which to review "hundreds of thousands of pages to be reviewed", while in other cases uniform practice allowed "five minutes" in situations in which only one hundred or "hundreds of pages" (or less) of record were in question. Ohio Bell Telephone vs. PUC (1937) 301 U.S. 292, 304-305; Morgan vs. United States (1936) 298 U.S. 468, 480-481; Morgan vs.

United States (1938) 304 U.S. 1, 18-19; **Kwock Jan Fat vs. White** (1920) 253 U.S. 454, 458-459; **Willner vs. Committee** (1963) 373 U.S. 96, 105.

13. Appellee's and California Supreme Court's traditional and deeply ingrained deference to recommendations of Committee (of Appellee) is an unconstitutional deprivation of **14th Amendment** due process rights. The tradition and policy are based upon the assumption that "great weight must be given to testimonial evidence", because Appellee hearing Committee had the opportunity to observe the demeanor of the witnesses who testified. In this case, the recommendation of Committee (hearing body) is based solely upon documentary evidence (incompetent, at that), and not on evidence of witnesses and their demeanor"". There were no witnesses whatsoever to be observed by hearing Committee (or hearing body) who testified concerning the

merits, i.e. concerning or supporting "guilt".

14. Appellant's livelihood and lifelong right to practice profession are at issue. The State's Court of only and last resort promises and guarantees that it will fully review all of the evidence and record[6], but fails to do so. Such failure arises from physical impossibility because of the "eleventh hour" special, pro tem, appointment of two of its seven justices. Its Opinion expressly states that the disbarring Opinion is "unanimous". The statement is false because the two temporary appointees could not possibly (physically) have reviewed all of the

---

[6]In Re Shattuck (1929) 208 Cal. 6, 11; In Re Petersen (1929) 208 C. 42, 46, 53, 280 P. 124; Furman v. State Bar (1938) 12 C.2d 212, 214, 83 P.2d 12; Werner v. State Bar (1939) 13 C.2d 666, 673, 91 P.2d 881; Gray v. State Bar (1936) 7 C.2d 177, 180, 59 P.2d 1033; Herrscher v. State Bar (1935) 4 C.2d 399, 401, 49 P.2d 832; Hildebrand v. State Bar (1941) 18 C.2d 816, 834, 117 P.2d 860; Schullman v. State Bar (1963) 59 C.2d 590, 599, 30 C.R. 834, 825, 415 P.2d 521.

record and evidence within the time available to them. To predicate the revocation of license (livelihood) on such a false premise and statement makes a mockery of, and is a shameful deprivation of due process under the **14th Amendment**. **In Re Murchison** (1955) 349 U.S. 623; **Sacher v. United States** 343 U.S. 1; **Willner v. Committee** 373 U.S. 96, 105.

15. The "Trial Examiner" (Prosecutor) showed to the Hearing Committee a writing which Prosecutor and Committee read and considered, but which Committee, at request of Prosecutor, refused to allow Appellant ("accused") to see, thus a "secret writing" to Appellant.

The Prosecutor also made several flatly false material statements (highly prejudicial to Appellant) to the Appellee (Committee, Review Department). The "disbarment" Opinion, in material aspects, rests upon the misstatements as if they were true.

The Prosecutor manufactured "evidence" by

making statements concerning matters of which he had no knowledge, as if they were facts. In his brief he pointed to absolutely no evidence whatsoever to support his statements, inferences of accusatory conclusions. Appellant was prevented from replying to those falsities by Committee which refused "equal briefing time" (one year less than Prosecutor's) to Appellant, and thus refused to allow Appellant to file any brief at all.

These intentional, blatant and continuous acts of misconduct were committed by seasoned and experienced trial lawyers, leaving no doubt that the misconduct was carefully contrived and calculated to the result of determination of culpability and guilt. Such misconduct and the resulting determination of guilt and imposition of punishment violated Appellant's due process rights to a fair trial, as guaranteed by **14th Amendment**. **Brady v. Maryland** (1963) 373 U.S. 83.

Although Appellant brought these

misconduct matters to the attention of the Court of last resort, that Court allowed the injustice and falsities to go uncorrected. Alcorta v. Texas 355 U.S. 28; Wilde v. Wyoming 362 U.S. 607.

16. The vast disparity of time allotted for briefing (1-1/2 years to "quasi-prosecutor", and four months to accused attorney), and ultimate denial to accused of his right to file any brief whatsoever, constitutes clear deprivation of Appellant's due process, equal protection, and fair hearing rights under the 14th Amendment. In Re Ruffalo (1968) 390 U.S. 544, 551 expresses the policy of this Court that disbarment proceedings are adversary, are quasi-criminal, and the attorney "is accordingly entitled to procedural due process . . . ". Ruffalo, supra, 390 U.S. 544, 550. Also see Willner vs. Committee (1963) 373 U.S. 96, 105.

17. It is well-settled that the right of cross-examination is the primary interest secured by the confrontation guarantee, and an essential safeguard of a fair trial. **Pointer vs. Texas** (1965) 380 U.S. 400, 405-407; **Douglas vs. Alabama** (1965) 380 U.S. 415, 418-420; **Davis vs. Alaska** (1974) 415 U.S. 308 (no specific showing of prejudice is required), and thus the harmless error doctrine is not applicable.

18. Appellant's Petition for Review (dated October 20, 1986) directed to State Supreme Court, at p. 40, complained of the unlawful procedures of Appellee which deprived Petitioner (here Appellant) of "his due process right to a fair hearing" (Par. 11), and stated "In this case, there is utter failure - when Petitioner (here Appellant) and others like him caught 'in the system', have been exposed to the unthinkable, if not disgraceful, actions of the Committee

(Appellee here), as described in Paragraphs 1 through 10 of this Section III" [Par. 11(B)].

The Opinion (disbarment) of the California Supreme Court (p. 44) by taking the phrase out of context makes a parody and reverses the meaning of "caught in the system" as used by Appellant. Appellant was professing his innocence, and assailing the corruptness of Appellee. The California Supreme Court Opinion interpreted the phrase "caught in the system" to mean a confession and admission of guilt of Appellant - a shameful and intentional distortion upon which the "conviction" rests.

Especially in this "no evidence" case, the unfair and desperately strained effort to twist a protestation of innocence into an admission of guilt clearly violates **14th Amendment** due process rights.

19. Certainly a determination of guilt by California Supreme Court based upon its own

mistaken version of the facts constitutes a denial of a meaningful and fair review in the Court of Last Resort. The mistaken version concerned alleged "refusal to turn over clients' files" and "blameworthiness" for starting bankruptcy petition; the record is clear that the opposite is true. Such "determination" violates rights of due process and **14th Amendment** fair hearing of Appellant.

20. Appellee's admitting and considering as "evidence", and California Supreme Court's adoption of that position, and adoption of recommendation of disbarment based thereon, of hearsay statements of a referee in bankruptcy contained in a "Certificate of Review", violates due process, fair hearing and equal protection rights under the **6th and 14th Amendments**, because Appellee and California Supreme Court's conduct and actions deprived Appellant of right of confrontation, right of cross-examination, and rights to fair hearing

and due process.

21. The total 18 years of pendency of the quasi-criminal disciplinary proceedings, four years of which transpired due to Appellee's failure to inform Appellant of the charges against him, and 10 years expended in the conduct of the hearings, which delay was unilaterally attributable to the actions of the Appellee, coupled with the harshness of the penalty (permanent disbarment) constituted cruel and unusual punishment in deprivation of **8th and 14th Amendment** rights. Appellee's such failure (endorsed by California Supreme Court in finding and punishing by disbarment) in pre-trial delay in notifying Appellant of the fact and nature of charges against him for four years following the filing of the complaint violated **6th Amendment** right to be informed of the charges pending against him, in connection with speedy trial right, and also resulted in denial of opportunity to

introduce evidence and cross-examine witnesses because of such delay. Witnesses in civil cases (conclusions of which were used as basis for determining guilt in the disciplinary case) could not be (or have been) cross-examined by Appellant where Appellant was unaware of the charges about which to cross-examine such witnesses, where parts of records and hearsay conclusions in such civil cases formed the basis for determination of Appellant's guilt or culpability in quasi-criminal disciplinary proceedings.

Timeliness

Background: Orders of California Supreme Court:

May 27, 1987 - Malcolm Lucas, C.J. recused from further participation in subject proceeding. (Appendix 6)

August 6, 1987 Extends time for granting, denying rehearing to September 11 or the date

on which rehearing granted or denial. (Appendix 7)

Sept. 2, 1987 Denial of Rehearing, signed by LUCAS, C.J. (Appendix 8)

Feb. 18, 1988 Final, last denial of rehearing. (Appendix 3)

The September 2, 1987 Order, since signed by (recused) disqualified Justice (LUCAS) is VOID. In the February 18, 1988 Order, Arguelles, Acting C.J. attempts to make the Feb. 18 Order retroactive by two methods, both of which are unlawful and unconstitutional, making the only effective date of rehearing denial Feb. 18, 1988, the lat Order in time.

First Method: "nunc pro tunc" effective September 2, 1988. Since the Lucas Order (Sept.2) is a judicial act and error, and not "clerical", it cannot be corrected or amended by a later order. The California Supreme Court has specifically so held in Van

Tiger vs. Superior Court (1936) 7 Cal.2d 277, 60 Pac.2d 851.

"It is entirely improper...to order a nunc pro tunc entry where the result would be unconscionable", specifically where the effect would be to cut off time to appeal, as would be true in the instant case." Phillips vs. Phillips (1953) 41 Cal.2d 869, 875; 264 Pac.2d 926, cited by Witkin, California Procedure 3d, Section 63, p. 497.

Second Method: By attempting to invoke Rule 27(e) (quoted in Appendix 3), so that, in effect, the rehearing is deemed denied by "silence and expiration" on September 11, 1987. In the instant case, if Rule 27(e) were to be applied such application would be an unconstitutional one because it deprives Appellant of the vested federal right to appeal to this Court. The Feb. 18 Order (Appendix 3) applying Rule 27(e) would accomplish retroactivity (to September 11), i.e. more than the 90 days allowed for appeal

as a matter of right.

State statutes are Rules, such as Rule 27(e), should not be construed so as to preclude judicial review; the very existence of constitutionally-derived vested rights demands that the state court of last resort should not construe a statute or rule so as to prevent judicial review, in violation of procedural due process principles of the 5th and 14th Amendments, U.S. See Mathews vs. Eldridge (1976) 424 U.S. 319, 330-322.

Thus whether the First or the Second method to attain retroactivity is considered, neither is valid for reasons stated immediately above. Such result is consistent with policy of this Court. See Davis vs. Wechsler (1923) 263 U.S. 22; Cardona vs. Quinones (1916) 240 U.S. 83; U.S. vs. Gomez (1965) 70 U.S. 752.

Remaining, then is the valid portion Feb. 18, 1988 Order, as the final Order (for timeliness of this appeal) since neither

retroactive effort is cognizable or valid. The Order of Feb. 18, 1988, speaks as of its own date, and the Sept. 2 and Sept. 11 dates are nullities.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Dated: May 17, 1988.

Respectfully submitted,

Jerome B. Rosenthal
6535 Wilshire Blvd.
Los Angeles, CA 90048
(213) 658-6411
(213) 276-9673
Appellant, Pro Se

LIST OF APPENDICES

LIST OF APPENDICES

No.	Description
1	State Bar Committee "DECISION"
2	State Bar "NOTICE TO SHOW CAUSE"
3	California Supreme Court "ORDER" filed February 18, 1988 (final) denial rehearing
4	Omitted, officially reported "OPINION" of California Supreme Court July 13, 1987, Jerome B. Rosenthal vs. State Bar of California, 43 C.3d 612, 238 Cal.Rptr. 377
5	"NOTICE OF APPEAL" to Supreme Court of the United States filed in the Supreme Court of California, February 29, 1988
6	California Supreme Court Order May 27, 1987, recusing Chief Justice (Malcolm Lucas) from further participation in this proceeding
7	California Supreme Court Order August 6, 1987 extending time for granting, denying rehearing to September 11 or the date on which rehearing is granted or denied
8	California Supreme Court Order September 2, 1987, signed by (Malcolm) Lucas, C.J., denying rehearing

APPENDIX 1

State Bar Committee "DECISION"

THE STATE BAR OF CALIFORNIA

LOCAL ADMINISTRATIVE COMMITTEE NO. 53

FOR THE COUNTY OF LOS ANGELES

AND

THE STATE BAR COURT

THE STATE BAR OF CALIFORNIA

In the Matter of	)	Case No. LA2235
	)	
JEROME B. ROSENTHAL, a Member of the State Bar.	)	DECISION
	)	

On or about December 6, 1972, Respondent JEROME B. ROSENTHAL was charged and thereafter duly and regularly served with a NOTICE TO SHOW CAUSE in the above-entitled matter.

On or about March 15, 1973, Respondent appeared in this matter by filing an ANSWER TO NOTICE TO SHOW CAUSE.

On or about November 6, 1974, this matter duly and regularly came on for hearing before DONALD C. MITCHELL, Esq., ALBERT J. GALEN, Esq., and SAMUEL C. PALMER III, Esq. On or about January 30, 1981, Mr. Palmer resigned.

Messrs. Mitchell and Galen.

Numerous hearings were held and evidence, both oral and documentary, was introduced.

The Committee now, by unanimous decision, makes these:

FINDINGS OF FACT

1. During all times mentioned below, JEROME B. ROSENTHAL (Respondent) was and is now a member of the State Bar of California, licensed to practice law in the State of California.

2. From 1956 to about July 25, 1968, Respondent undertook to represent and did represent DORIS DAY MELCHER as her attorney, business manager, tax advisor and agent in various and numerous legal, accounting and business matters.

3. From 1956 until the death of DORIS DAY MELCHER's husband, MARTIN MELCHER, Respondent undertook to represent and did represent MARTIN MELCHER as his attorney, business manager and tax advisor in various

and numerous legal, accounting and business matters.

4. During the periods of time mentioned above, Respondent also undertook to represent and did represent corporations in which DORIS DAY MELCHER and MARTIN MELCHER owned an interest. Respondent represented each of those corporations as legal counsel. These corporations included ARWIN PRODUCTIONS, DAYWIN MUSIC, ARTISTS MUSIC, and MARTIN MELCHER PRODUCTIONS.

5. In 1968, MARTIN MELCHER died. Respondent then undertook to represent and did represent TERRENCE PAUL MELCHER, as personal representative of his father's probate estate. In May, 1968, TERRENCE PAUL MELCHER discharged Respondent as his attorney in those proceedings.

6. In July, 1968, DORIS DAY MELCHER discharged Respondent as her attorney and in all other capacities personal to her. Respondent was then also discharged as legal

counsel for the corporations named above.

COUNT ONE

7. During the time Respondent represented MARTIN MELCHER, DORIS DAY MELCHER, TERRENCE PAUL MELCHER, and the corporations named above, and each of them (former clients), in the capacities stated above, Respondent received, prepared, maintained and controlled numerous recOrds. These records included Contracts and other legal documents, books and records of account, and various other papers and writings important to the personal and business affairs of Respondent's former clients. These records were the property of one or more of Respondent's former clients.

8. Following the termination of Respondent's relationship as attorney for his former clients, numerous requeSts and demands were made by and on behalf of them, and each of them, for (a) the return of their records, and (b) an accounting of their affairs during

the times Respondent had represented them in his various capacities.

9. Respondent refused to return the records. Respondent refused to render any accountings. Such refusals were unreasonable and without justification. Such refusal.s were intended to harass Respondent's former clients and delay and frustrate their ability to discover the nature and status of their business and legal affairs during the time they were subject to Respondent' s control.

10. Respondent's conduct caused DORIS DAY MELCHER to apply to the court for relief. The court then appointed a receiver so that the records could be examined by her or on her behalf. As a result of those proceedings, DORIS DAY MELCHER incurred unnecessary legal and other expenses and costs.

COUNT TWO

11. On or about August 8, 1968, Respondent caused a petition to be filed to remove TERRENCE PAUL MELCHER as personal

representative of his father's estate. Although that petition was denied, it was supported by law and some evidence and hence not filed for the sole purpose of harassing Respondent's former clients.

COUNT THREE

12. Following the death of MARTIN MELCHER, Respondent claimed ownership interests, profit shares, and other proprietary rights in various business ventures of MARTIN MELCHER and DORIS DAY MELCHER (his clients). These ventures had been formed, promoted or handled by Respondent $s his clients' legal and business advisor. Notwithstanding these claims, Respondent refused to furnish to or allow his clients, their successors in interest or representatives to have access to their own files and records which pertained to those ventures and which Respondent had kept and maintained for their benefit.

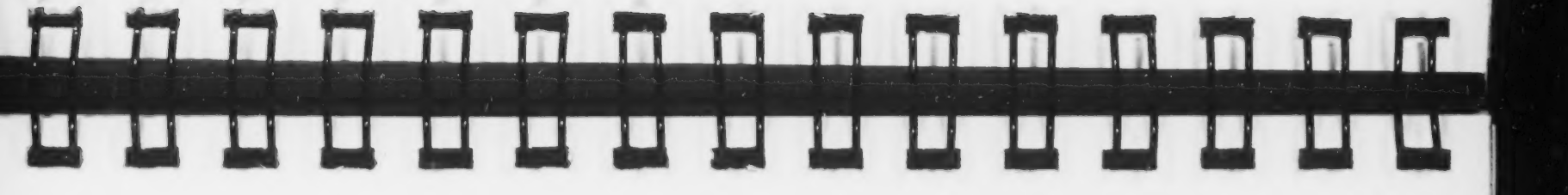
13. Respondent's refusal to furnish

those files or records to or to allow his clients, their successors in interest or representatives to have access to them was unreasonable, without justification, intended to harass and delay them in their effort to evaluate Respondent's claims, and to prejudice their defense of lawsuits Respondent commenced against them.

COUNT FOUR

14. In or about November, 1968, Respondent caused a petition to be filed in the Dallas Division of the United States District Court for the Northern District of Texas. It was entitled IN THE MATTER OF DALLAS CABANA, INC., BANKRUPT, and numbered BK3-1210 (the Dallas case).

15. Respondent caused that petition to be filed without requisite statements and schedules. Notwithstanding a court order to file such statement with schedules by December 5, 1968, Respondent failed to have them filed until April 1, 1969.

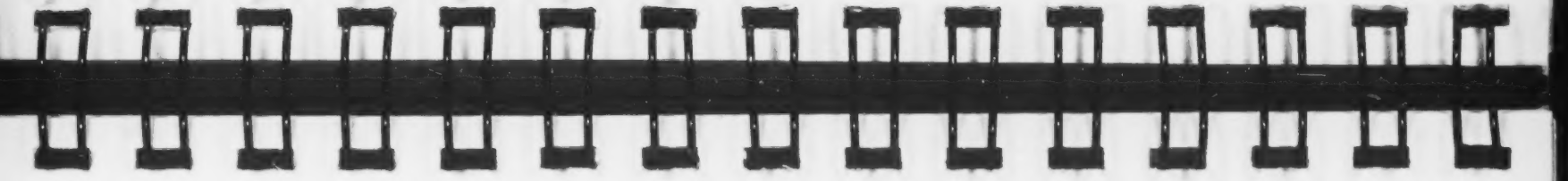


16. On or about February 11, 1969, the court in that case ordered Respondent to file a plan of arrangement by March 3, 1969. Respondent requested and obtained an extension of time within which to file such plan to May 1, 1969. Such continuance delayed all other proceedings. The plan of arrangement which Respondent subsequently filed was a sham and presented in bad faith.

17. Such conduct was committed or permitted by Respondent for the purpose of delaying the disposition of the Dallas case on its merits and was an obstruction to the orderly administration of justice in those proceedings.

COUNT FIVE

18. On or about March 3, 1969, DORIS DAY MELCHER and TERRENCE PAUL MELCHER submitted a plan of arrangement in the Dallas case (MELCHER plan). A majority of the bankrupt's creditors, in number and amount, accepted the MELCHER plan. Those creditors represented



$1,872,001.00 of debt. Creditors opposing the MELCHER plan represented only $591,302.00 of debt, all but $33,040.00 of which was being claimed by CABANA MANAGEMENT, INC., a corporation, and ROSENTHAL. AND GREEN, a law partnership. Both CABANA MANAGEMENT, INC. and ROSENTHAL AND GREEN Were the alter ego of and dominated and controlled by Respondent.

19. Respondent then caused CABANA MANAGEMENT, INC. and ROSENTHAL AND GREEN to submit false and grossly exaggerated amendments to their claims in that case. These amendments increased the debt which they represented and claimed to $2,291,302.00.

20. Respondent knew that such amendments were false, a sham, presented in bad faith, grossly exaggerated, and made for the purpose of depriving the MELCHER plan of majority approval. Those amendments were an obstruction of justice in those proceedings.

COUNT SIX

21. Commencing in March, 1969,

Respondent made misrepresentations to the court in the Dallas case. Those misrepresentations included these:

21.1 Respondent represented that the debtor owned the DALLAS CABANA HOTEL. When a bona fide offer to purchase that asset was received, however, Respondent then misrepresented that the debtor did not own it but that it was owned by a joint venture.

21.2 On February 27, March 17, April 28, April 30, May 16 and in June, 1969, Respondent misrepresented the value of the DALLAS CABANA HOTEL.

21.3 On March 17, May 16 and in June, 1969, Respondent misrepresented that a purchaser was ready, willing and able to and had offered to pay in excess of $4,500,000.00 for the DALLAS CABANA HOTEL. 21.4 On February 17, 1969, Respondent opposed the issuance of an order directing filing of plans of arrangement. That opposition was supported by the misrepresentation that Respondent had been

denied access to DALLAS CABANA HOTEL books and records.

21.5 On May 12, 1969, Respondent opposed the issuance of an order quieting title to the DALLAS CABANA HOTEL. That opposition was supported by misrepresentations that:

(a) His former clients had illegally seized records containing information essential to Respondent's preparation for the hearing on that order;

(b) The Seizure of said records was then the subject of an appeal in the California state courts and hence the court should take no action on the quiet title order until that appeal had been decided; and

(c) That the seized records were stored 10 to 15 miles from Respondent's office.

21.6 Respondent filed objections to interrogatories of the trustee in bankruptcy. Those objections were supported with the misrepresentation that a receivership established by a California court had deprived

Respondent of access to records necessary to allow Respondent to properly answer such interrogatories.

22. Each of the above misrepresentations were made intentionally, made with knowledge of their falsity, made for the purpose of delay, made in bad faith, and were an obstruction of justice in those proceedings.

COUNT SEVEN

23. Prior to commencement of the trial in the Dallas case, Respondent engaged in further conduct, the purpose of which was to delay commencement of that trial, further harass his former clients, and obstruct the orderly administration of justice in those proceedings. Such conduct included this:

23.1 In November, 1969 (10 days before commencement of the trial), Respondent filed a motion to disqualify counsel for the trustee. Respondent knew that counsel for the trustee had spent months preparing the matter for trial, and that the court had denied

substantially the same motion approximately five months earlier. Such motion was without merit and known by Respondent to be without merit.

23.2 In December, 1969 (6 days prior to commencement of the trial), Respondent filed a petition to transfer the hearing to California. Such motion was without merit and known by Respondent to be without merit.

23.3 Respondent refused, prior to trial, to sign his deposition and caused those under his control and domination to dc likewise.

23.4 Respondent refused, prior to trial, to correct deficiencies in claims which Respondent had submitted and caused Others under his control and domination to do likewise, notwithstanding representations made to the court at a pre-trial conference hearing that such deficiencies would be corrected prior to trial.

COUNT EIGHT

24. Commencing in December, 1969 and

during the trial of the Dallas case, Respondent engaged in further conduct, the purpose of which was to delay the progress of the trial, harass his former clients, and obstruct the orderly administration of justice in those proceedings. Such conduct included this:

24.1 Engaged in obstinate, insulting and defiant conduct toward the court and opposing counsel;

24.2 Engaged in evasive testimony;

24.3 Offered (or caused to be offered by his counsel) specious objections to questions asked by opposing counsel in cross-examination of Respondent.

COUNT NINE

25. During the trial of the Dallas case, Respondent testified under oath on more than one occasion that his law firm had not received payment foe legal services rendered to the DALLAS CABANA HOTEL. SUch testimony was false and known by Respondent to be false.

In truth and in fact, Respondent's law firm had received $20,000.00 for services rendered to the DALLAS CABANA HOTEL.

COUNT TEN

26. In 1963, Respondent caused CABANA MANAGEMENT, INC. (CABANA) to be created at a time when he was employed to represent various legal and business interests of MARTIN MELCHER and DORIS DAY MELCHER. The MELCHERs owned controlling stock or beneficial interests in the DALLAS CABANA HOTEL and the PALO ALTO CABANA HOTEL. CABANA was intended to service and manage the Dallas and Palo Alto hotels.

27. From its creation in 1963 to and including May, 1970, Respondent (or Respondent's law partnerships) directed, dominated and controlled CABANA. CABANA was Respondent's alter %go and dominated and controlled by Respondent. CABANA's interests were adverse to the interests of Respondent's clients, the MELCHERS and the Dallas and Palo Alto hotels. CABANA was a fraudulent device

created and used for the purpose of claiming money from the management and/or operation of the Dallas and Palo Alto hotels. Such claims were, for the most part, contrived, a sham, fraudulent, exaggerated and, in some instances, duplicative of claims made by Respondent's law firm for the same services.

28. Respondent represented these conflicting interests without obtaining the consent of all parties concerned.

29. RespOndent intentionally caused CABANA to overstate expenses allegedly incurred for the benefit of the Dallas and Palo Alto hotels.

30. Respondent intentionally caused CABANA to understate payments made by the Dallas cabana and Palo Alto hotels on account of such expenses.

COUNT ELEVEN

31. In 1969 or 1970, acting as president of DOANBUY LEASE AND CO, INC., a corporation, Respondent caused four actions to be filed in

Lea County, New Mexico, against some of Respondent'S former clients and others. It was necessary for the defendants to obtain a court order requiring Respondent to appear and be deposed in Roswell, New Mexico. Respondent appeared pursuant to such order but engaged in conduct that was so evasive, hostile, insulting and contrary to good order that it amounted to a refusal to be deposed. It was then necessary for the defendants to obtain a court order for relief because of such conduct.

COUNT TWELVE

32. In April, 1968, while Respondent was employed as legal counsel for TERRENCE PAUL MELCHER in his capacity as administrator of the Estate of MARTIN MELCHER, Deceased, Respondent advised his client to authorize certain payments and execute certain documents on behalf of that estate. Such payments included the payment of $60,000.00 to Republic Supply, $17,000.00 to Arkansas-Louisiana

Producing Company, and the execution of a note in the sum of $136,000.00 payable to Arwin Productions, Inc. Respondent obtained personal benefit from each of those payments and from that note. Respondent did not disclose that fact to his client but, on the contrary, led his client to believe that such transactions were for the sole benefit of the estate.

COUNT THIRTEEN

33. In addition to the actions and proceedings mentioned above, Respondent caused numerous lawsuits to be filed for the purpose of harassing his former clients. Those lawsuits included these:

Cabana Management, Inc. v. Terrence P. Melcher, etc., et al., Los Angeles County Superior Court Case No. 942239;

Rosenthal S. Green, etc. v. Terrence P. Melcher, etc., et al., Los Angeles County superior Court Case No. 952949;

Jerome B. Rosenthal, et al. v. Terrence P. Melcher, etc., et al., Los Angeles County Superior Court Case No. 952950;

Jerome B. Rosenthal, et al. v. Terrence P. Melcher, etc., et al., Los Angeles

County Superior Court Case No. 952951;

Rosenthal & Green, etc. v. Terrence P. Melcher, etc., et al., Los Angeles County Superior Court Case No. 952953;

Rosenthal L Green, etc., et al. v. Terrence P. Melcher, etc., et al., Los Angeles County Superior Court Case No. 952954;

Jerome B. Rosenthal v. Doris Day Melcher, etc., et al., Los Angeles County Superior Court Case No. 958726.

COUNT FOURTEEN

34. In or about March, 1953, Respondent negotiated an ostensible purchase of Federal Land Bank Bonds for MARTIN MELCHER and DORIS DAY MELCHER (the MELCHERS). These bonds had a face value of $3 million. They were purchased on credit by a promissory note bearing 4-1/4% interest issued by the MELCHERS.

35. Although purporting to represent the MELCHERS in this transaction, Respondent secretly and without their knowledge or consent, also negotiated for his own account the purchase of Fl million worth of the same kind of bonds. Respondent's purported purchase was also on credit, but he negotiated

his promissory note at an interest rate of only 3-1/28. The 3/4% differential in interest caused the MELCHERS to have an out-of-pocket expense in excess of 4008 more than Respondent's out-of-pocket expense during the time payments were made on those notes.

CONCLUSIONS OF LAW[1]

36. By reason of the facts stated above, Respondent:

(a) Wilfully violated his oath as an attorney as set forth in Section 6067 of the Business G Professions Code in that he failed to faithfully discharge his duties as an attorney at law to the best of his knowledge and ability.

(b) wilfully failed to discharge his duties as an attorney in violation of Section 6068(c) of the Business L Professions Code in that he maintained proceedings known by him to

---

[1]All references to "client" or "clients" below refer to MARTIN MELCHER, DORIS DAY MELCHER, TERRENCE PAUL MELCHER, and the corporations referred to in Paragraph 7 above, and each of them.

be illegal abuses of legal processes or unjust.

(c) Wilfully failed to discharge his duties as an attorney in violation of Section 6068(d) of the Business s Professions Code in that he employed, for the purpose of maintaining causes confided to him, means not consistent with the truth and sought to mislead the judge or judicial officer by artifice or false statements of fact.

(d) Wilfully failed to discharge his duties as an attorney in violation of Section 6068(g) of the Business s Professions Code in that he encouraged the commencement and maintenance of actions and proceedings with corrupt motive of passion or interest.

(e) Violated Section 6106 of the Business s Professions Code in that he committed acts involving moral turpitude or dishonesty in the course of his relations as an attorney and otherwise.

(f) Violated Section 6077 of the Business

& Professions Code in that he wilfully violated the following Rules of Professional Conduct of the State Bar of California[2]:

(i) Rule 4 in that he acquired interests adverse to his clients;

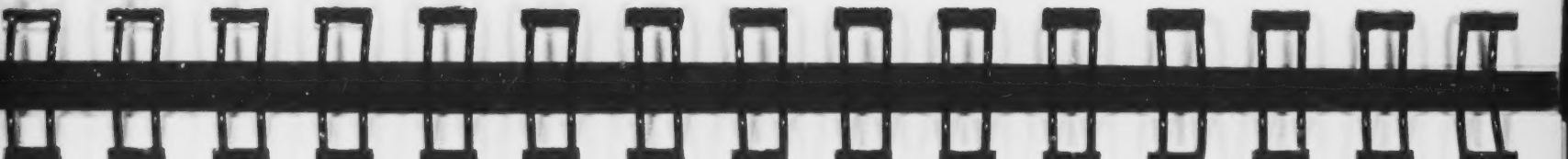
(ii) Rule 5 in that he accepted employment adverse to his clients without the consent of his clients relating to matters in reference to which he obtained confidential information by reason of or in the course of his employment by such clients;

(iii) Rule 6 in that he accepted professional employment without first disclosing his relation, if any, with the adverse party, and his interest in the subject matter of the employment;

(iv) Rule 7 in that he represented conflicting interests without obtaining the

---

[2]References to Rules of Professional Conduct are to those in effect at the time of the violations. The revised and current Rules are 2-110(A), 4-101, 5-101, 5-102(A) and 5-102(B).



consent of all parties concerned;

(v) Rule 13 in that he accepted employment to prosecute and did prosecute cases solely for the purpose of harassing his clients and delaying them in the prosecution of their claims against him.

(g) Violated his oath and failed to discharge other duties and obligations not specifically mentioned in the Rules of Professional Conduct but which fall within the purview of Sections 6067, 6068 and 6103 of the Business & Professions Code. Such other duties and obligations were of common knowledge and usage within the legal profession in the State of California at the time of their violation and were then commonly observed and performed by members of the Bar in good standing and repute. Respondent wilfully violated his oath and failed to discharge such other duties and obligations in that he:

(i) Failed to perform legal services

competently for and on behalf of his clients and with reckless disregard for their welfare;

(ii) Refused to render appropriate accounts to his clients regarding funds, securities and other property of his clients held by him or subject to his control;

(iii) Refused to promptly pay or deliver to his clients the funds, books, records and other properties in his possession or subject to his control which his clients were entitled to receive.

MATTERS IN MITIGATION OR AGGRAVATION

37. By letter dated October 30, 1985, the Committee advised Respondent and counsel for the State Bar of a preliminary finding of culpability and invited the submission of evidence in mitigation or aggravation to be submitted prior to finalization of the Committee's decision and not later than November 22, 1985. No response was forthcoming from counsel for the State Bar. Respondent responded by "letter" dated

November 15. He there requested (a) a new decision, (b) specific findings as defined by him, and (c) a postponement of the November 22 date. Except to the extent that this decision and the findings recited above comply with Respondent's request, his requests for a new decision and findings of fact in the manner and form demanded by him are denied. With respect to Respondent's request for postponement, it is denied.

38. In addition to the matters alluded to above, the evidence also permits the finding that Respondent committed other offenses not specified in the NOTICE TO SHOW CAUSE. Such offenses include Respondent's gross negligence in handling other affairs of his clients, engaging in kickbacks, commingling client funds, over-reaching in matters pertaining to fees, misuse of client funds in other business and professional matters, and participation in other fraudulent and/or sham transactions. It also appears

that Respondent prosecuted appeals solely for the purpose of delay and not in good faith.[3]

39. Respondent's conduct and attitude throughout these proceedings also support the disposition recommended below. Respondent's testimony before and representations made to the Committee were less than candid. He interposed every conceivable motion, objection and/or other device or artifice throughout these proceedings, most of which appeared to be made for the purpose of delay and to frustrate the orderly resolution of this matter on its merits. This pattern of conduct followed the same modus employed by him in the Samet v. Day litigation in California the bankruptcy proceedings in Texas, and the oil litigation in New Mexico.[4] The last example

---

[3]See, for example, Doanbuy Lease & Co. Inc. v. Melcher (1971), 83 N.M. 82, 448 P2d 339, Exhibit 10.

[4]Respondent's conduct was criticized by the courts in Texas in Dallas Cabana v. Collier, 469 F.2d 606 (5th Cir. 1972), and in New Mexico in Doanbuy Lease & Co. Inc. v.

of it in these proceedings can be seen upon examination of his "letter" to the Committee referred to above and dated November 15, 1985.

RECOMMENDED DISCIPLINE

40. Pursuant to Sections 6078, 6100, 6103 and 6106 of the Business S Professions Code, it is recommended that Respondent be disbarred from the practice of law.

DATED: December 17, 1985.

(S) DONALD C. MITCHELL
DONALD C. MITCHELL

(S) ALBERT J. GALEN
ALBERT J. GALEN

Melcher, supra. See Exhibits 10, 119 and 149.

APPENDIX 2

State Bar "NOTICE TO SHOW CAUSE"

THE STATE BAR OF CALIFORNIA

LOCAL ADMINISTRATIVE COMMITTEE NO. TWO

FOR THE COUNTY OF LOS ANGELES

In the Matter of	)	Case No. LA 2235
	)	
JEROME B. ROSENTHAL, Member of the State Bar.	)	NOTICE TO SHOW CAUSE
	)	

TO: JEROME B. ROSENTHAL

It appearing that you were admitted to the practice of law in the State of California on June 11, 1946 and that you are and at all times herein mentioned have been an attorney and counselor at law and a member of the State Bar of California; and

Preliminary investigation having been made pursuant to the provisions of Rule 21 of the Rules of Procedure of the State Bar of California, during the course of which preliminary investigation you were given an opportunity to be heard, and this Committee, as a result of said preliminary investigation,

should be instituted and a hearing held in accordance with the provisions of Rule 2 of the Rules of Procedure of the state Bar of California;

NOW, THEREFORE, you are hereby notified to appear in person or by counsel or both, before Local Administrative Committee No. Fifty-Three for the county of Los Angeles at 1230 West Third Street, in the City of Los Angeles, in said State, on Thursday March 15, 1973 at the hour of 10:00 a.m. thereof, then and there to show cause why you should not be disciplined for professional misconduct, to wit:

Violating your oath and duties as an attorney and counselor at law within the meaning of Section 6103 of the Business and Professions Code of the State of California as the same are prescribed by Sections 6067 and 6068 of said Code; violating Section 6128 of the Business and Professions code of the State of California; the commission of acts

involving moral turpitude dishonesty or corruption within the meaning of Section 6106 of the Business and Professions Code of the State of California and willfully violating Rules 4, /, 9, and 13 of the Rules u[Professional Conduct of the State Bar of California; and in particular as follows:

COUNT ONE

I

From in or before the year 1956 until approximately July 25, 1968, MARTIN MELCHER, now deceased, and DORIS DAY MELCHER, wife and widow of MARTIN M. MELCHER, employed you to represent them in various legal, financial, accounting and business matters. From on or about April 24, 1968 and for approximately one month thereafter, you were attorney for MARTIN M. MELCHER's son, TERRENCE PAUL MELCHER, in his capacity as special administrator and administrator of his father's Estate. From in or before the year 1963 until or or about July 25, 1968, you were legal, business, and

financial advisor to various corporations owned, directly or indirectly, by DORIS DAY MELCHER and by MARTIN M. MELCHER or his Estate. These corporations included ARWIN PRODUCTIONS, DAYWIN MUSIC, ARTIST'S MUSIC, and MARTIN MELCHER PRODUCTIONS. In connection with said employments certain records and documents belonging to the respective Clients mentioned above came into your control or custody.

II

On or about July 25, 1968, DORIS DAY MELCHER discharged you from employment as her attorney and as attorney for the corporations to which reference has been made. In late May of 1968, TERRENCE PAUL MELCHER discharged you as attorney for him as administrator.

III

Commencing on or about the dates on which you were discharged by said clients, they made numerous requests that you return to them books, records and files which belonged to

them. It was also requested on numerous occasions that you make an accounting of the affairs of your former clients involving the handling of property whose value exceeds five million dollars.

IV

You unreasonably delayed returning any of the Melcher's property and you have refused to return at all a substantial portion of the property belonging to your former clients. You refused to make an accounting for the affairs of your former clients unless they re-employed you to act as attorney for MARTIN M. MELCHER's Estate at least for the period Of time during which an accounting was being prepared. When TERRENCE PAUL MELCHER refused to re-employ you as attorney for the Estate, you refused to make an accounting.

V

In order to gain access to her own property which had been withheld by you, it was necessary for DORIS DAY MELCHER to have a

receiver appointed. MRS. MELCHER has had to expend in excess of $50,000.00 in receiver's fees in order to examine her books, records and files which are or were in your possession. This financial expense is in addition to the inconvenience and effort required to make what would be otherwise routine reference to business records.

COUNT TWO

On or about August 8, 1968, you caused to be filed in Los Angeles County Superior Court, Case Number P534760, ESTATE OF MELCHER, a petition to remove TERRENCE PAUL MELCHER as administrator of his father's estate. Said petition was without substantial basis in law or fact and filed for the purpose of harassing your former clients. Although the petition was denied by the court, the Estate of MARTIN M. MELCHER was put to substantial expense in defending against the petition.

COUNT THREE

I

You have claimed ownership interest, profit shares, and other proprietary rights in various business ventures of MARTIN and DORIS MELCHER. In Spite Of these claims, you have refused to supply pertinent files and records to MRS. MELCHER's attorneys and accountants in order that your claims could be substantiated.

II

Your refusal to furnish these files and records or to allow access. to them prevented your former clients from ascertaining their rights and liabilities in connection with your claims.

III

Creditors' claims against the Estate of MARTIN MELCHER were filed by you or by the following-named entities in which you then had an interest: CABANA MANAGEMENT, INC.; ROSENTHAL & GREEN; TOMMY E. ATKINS PRODUCING CO., Ltd.; TOM ATKINS LINE CO., Ltd., dba

MELCHER-ATKINS OIL CO., Ltd. and as MOAR LINE CO. Ltd.

IV

Your refusal to allow your former clients to have access to their records and your refusal to account for your handling of their affairs has substantially prejudiced their ability to assess the validity of the above-mentioned claims, as well as having prejudiced their ability to defend against the various lawsuits you have caused to be filed against them.

COUNT FOUR

I

On November 25, 1968, in the Dallas Division of the United States District Court for the Northern District of Texas, you caused to be filed a petition under Chapter XI of the federal bankruptcy laws. The petition was entitled IN THE MATTER OF DALLAS CABANA, INC., BANKRUPT and was case number BK 3-1210 in Bankruptcy, hereinafter called "the Dallas

Case".

II

You caused said petition to be filed without the requisite statements and schedules. In spite of an order of the court to file such statements and schedules by December 5, 1968, you failed to have such filing performed until April 1, 1969.

III

On February 11, 1969, the court ordered you to file by March 3, 1969 a plan of arrangement in the Dallas Case. You requested and obtained an extension of time until May 1, 1969 in which to file said plan, the continuance delaying all other proceedings. The plan of arrangement which you subsequently filed was a sham, was filed in bad faith, and was interposed solely for the purpose of delaying the court's disposition of the Dallas Case on its merits.

COUNT FIVE

I

The allegations of Paragraph I of Count Four of this Notice are realleged and incorporated by this reference as if fully set forth herein.

II

On or about March 3, 1969 a plan of arrangement for the bankrupt in the Dallas Case was submitted by DORIS DAY MELCHER and TERRENCE PAUL MELCHER. The MELCHERS had also filed a petition in relation to the bankrupt in the Dallas Case and their petition was consolidated with yours. A majority of the bankrupt's creditors, in number and amount, had accepted the plan submitted by the MELCHERS. The amount of debt represented by those accepting the MELCHER plan was $1,872,001. The amount of debt represented by those opposing the MELCHER plan was $591,302.00, all but $33,040.00 of that amount being claimed by CABANA MANAGEMENT, INC., a

California Corporation controlled and dominated by you, and by ROSENTHAL & GREEN, a law partnership which you also controlled and dominated. In order to prevent the MELCHER plan from being confirmed, you caused CABANA MANAGEMENT, INC. and ROSENTHAL & GREEN to submit false and grossly exaggerated amendments to their claims bringing their total claims to $2,291,302.00, depriving the MELCHER plan of a majority approval as to amount of claims.

COUNT SIX

I

The allegations of Paragraph I of Court Four of this Notice are realleged and incorporated by this reference as if fully set forth herein.

II

Over a period of several months commencing in March, 1969, you obstructed the proceedings in the Dallas Case by various misrepresentations made to the court in that case. These

misrepresentations included the following:

(1.) You represented to the court that the debtor owned the Dallas Cabana Hotel. When a bona fide offer to purchase the hotel was received, you then intentionally misrepresented to the court that the debtor did not own the hotel but that instead it was owned by a joint venture.

(2.) On February 27, 1969, March 17, 1969, April 28, 1969, April 30, 1969, May 169 1969 and in June 1969, you intentionally misrepresented to the court the value of the Dallas Cabana Hotel.

(3.) on.March 17, 1969, May 16, 1969, and in June 1969, you represented to the court and to other parties that purchasers were ready to pay in excess of $4,500,000.00 for the Dallas Cabana Hotel. When such representations were made you knew them to be sham and you deliberately mislead the court in an

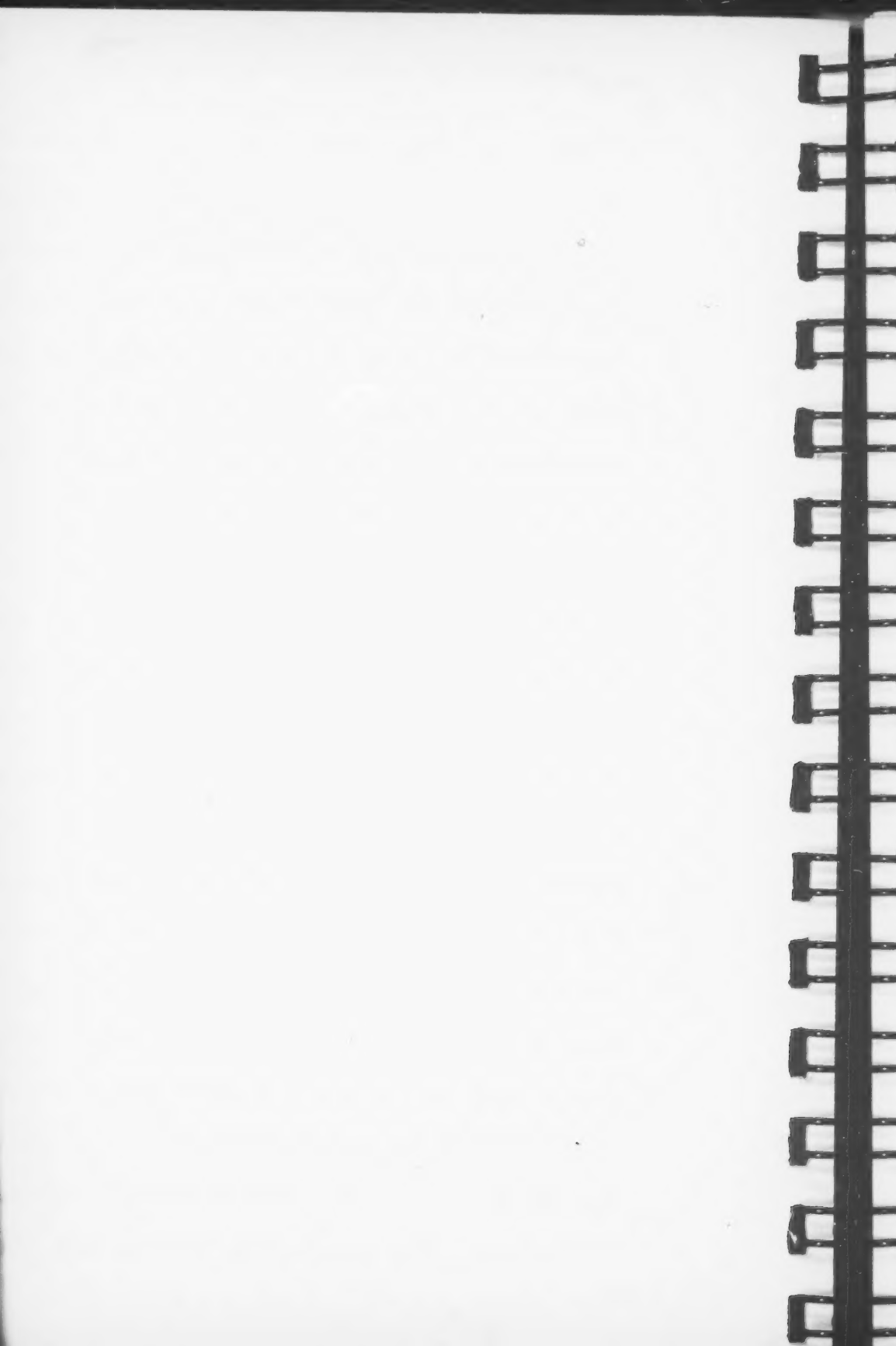
attempt to prevent court approval of the only bona fide offer to purchase the hotel.

(4.) On February 17, 1969 you opposed the issuance by the court of an order directing filing of plans of arrangement. Your opposition was supported by your representation to the court that you had been denied access to the books and records of the Dallas Cabana Hotel. When said representation was made, you knew it was false.

(5.) On May 12, 1969, you opposed the issuance of an order quieting title to the Dallas Cabana Hotel on the ground that the MELCHERS had illegally seized your law firm's records containing information essential to your preparation for the hearing on the order. You represented further that the seizure of said records was then the subject of an appeal in the California State Courts and

asked that the court take no action on the quiet title order until said appeal had been decided. You also represented to the court at that time that the seized records were stored ten to fifteen miles from your office. All of the foregoing representations were false and were known by you to be false when made.

(6.) On December 1, 1969, you filed objections to the interrogatories of the trustee in bankruptcy on the ground that a receivership established by the California State Courts deprived you of access to the records which were necessary tv allow you to properly answer the interrogatories. Because of the imminent commencement of the trial on the merits of the petition, there was no time for a hearing on your objections, and the trustee had to proceed to trial without any answers to the interrogatories served upon you. The professed ground for your



objection was a sham and was false and, when offered, was known by you to be false. The objections were made to delay and to thwart discovery sought by the trustee. On November 11, 1969, you failed to appear for your deposition which you had agreed to attend. The trustee was required to obtain a court order to compel you to return to the deposition.

COUNT SEVEN

I

The allegations of Paragraph I of Count Four of this Notice are realleged and incorporated by this reference as if fully set forth herein.

II

Prior to commencement of trial in the Dallas Case you engaged in certain conduct, the only purpose of which was to delay commencement of the trial in the Dallas Case. Included in such conduct was the following:

(1.) On November 28, 1969, ten days before commencement of the trial you filed a motion to disqualify the counsel for the trustee. You made the motion knowing that your motion had no merit, knowing that said counsel had spent months preparing the matter for trial, and knowing that the court had denied substantially the same motion five months earlier. Your motion to disqualify counsel was offered for the purpose of delaying the trial of the Dallas Case for the months it would taLe new counsel to prepare for trial.

(2.) On December 2, 1969, six days prior to trial in the Dallas Case, you engaged in conduct, the only purpose of which was to delay the trial. You filed a petition to transfer the hearing to California. There was no meritorious grounds for such a transfer. You refused to sign your deposition and caused your law partner

and your employee, one HARRISON, to likewise refuse to sign their depositions.

(3.) Until trial Commenced on December 8, 1969, you had not yet corrected the deficiencies in the claims submitted by you and by others controlled or directed by you, although you had represented to the court at a pretrial conference that such deficiencies would be corrected prior to trial.

COUNT EIGHT

I

The allegations of Paragraph I of Count Four of this Notice ire realleged and incorporated by this reference as if full set forth herein.

II

During the course of the trial of the Dallas Case, lasting more than two weeks, you obstructed the proceedings by obstinate, insulting and defiant conduct toward the court

and opposing counsel, by evasions in your testimony, by attempting to prevent cross-examination of yourself, and by offering or causing to be offered by your counsel, specious objections to questions asked by opposing counsel in their cross-examination of you.

COUNT NINE

I

The allegations of Paragraph I of Count Four of this Motion are realleged and incorporated by this reference as if fully set forth herein.

II

On more than one occasion during trial of the Dallas Case you testified under oath that your law firm had not received any payments for legal services rendered to the Dallas Cabana
Hotel. In truth and in fact, as was known to you when your testimony was given, your law firm had received $20,000.00 from the Dallas

Cabana Hotel for such legal services.

COUNT TEN

I

You caused CABANA MANAGEMENT, INC. to be created in 1967 at a time when you were employed to represent the various interests of MARTIN MELCHER and DORIS DAY MELCHER. The MELCHERS owned the controlling stock or beneficial interest in the Dallas Cabana Hotel and the Palo Alto Cabana Hotel,

II

The CABANA MANAGEMENT, INC. Commenced active functioning in June, 1965. At all times since its creation, to and including May 7, 1970, you or your law partnership directed and controlled CABANA MANAGEMENT, INC, The interests of CABANA MANAGEMENT, INC. were adverse to the interests of the MELCHER in that CABANA MANAGEMENT, INC. was no more than a fraudulent device by means of which you intended to claim moneys from the Dallas Cabana Hotel and from the Palo Alto Cabana

Hotel. Such claims were contrived for the most part, and even where some justification existed for the claims, they were largely duplicative of separate claims submitted by your law firm for the same services.

III

In relation to said claims, you deliberately and intentionally overstated expenses allegedly incurred on behalf of the hotel; and you deliberately and intentionally understated payments made to you by the hotels on account of such expenses. In truth and fact and as was known by you, the hotels had actually overpaid you on this account by some $7,092.00.

COUNT ELEVEN

In 1969 or 1970, acting as president of DOANBUY LEASE AND CO., INC., a California Corporation, you caused to be filed in the Lea County, New Mexico District Court four actions naming TERRENCE MELCHER, the estate of MARTIN MELCHER, DORIS DAY MELCHER and others as

defendants. In connection with said actions the defendants obtained an order requiring you to appear and be deposed for two days in Roswell, New Mexico. You appeared at such deposition but your conduct was so evasive, hostile, insulting and contrary to good order without cause therefor that it amounted to a refusal to be deposed.

COUNT TWELVE

In April, 1968, while you were employed as attorney for TERRENCE PAUL MELCHER in his capacity as administrator for the estate of MARTIN M. MELCHER, you advised him to authorize certain payments and execute certain documents on behalf of said estate. Included was a payment to REPUBLIC SUPPLY in the amount of $60,000.00, a payment to Arkansas-Louisiana Producing Company in the amount of $17,000.00, and a note payable to Arwin Productions, Inc. in the amount of $136,000.00. Although you obtained personal benefits from said payments and said not you

did not inform TERRENCE MELCHER of this fact, instead you advised TERRENCE MELCHER that said transactions were for the benefit of the MELCHER Estate.

COUNT THIRTEEN

In addition to the above-mentioned actions, you have caused numerous lawsuits to be filed for the sole purpose of harassing your former clients. Included in such lawsuits are the following:

(1.) Cabana Management, Inc. v. Terrence P. Melcher, etc. et al., Los Angeles County Superior Court Case No. 942239;

(2.) Rosenthal & Green, etc. v. Terrence P. Melcher, etc. et al., Los Angeles County Superior Court Case No. 952949;

(3.) Jerome B. Rosenthal, et al. v. Terrence P. Melcher, etc. et al., Los Angeles County Superior Court Case No. 952950;

(4.) Jerome B. Rosenthal, et al. v. Terrence P. Melcher, etc. et al., Los Angeles County Superior Court Case No. 952951;

(5.) Rosenthal & Green, etc. v. Terrence P. Melcher, etc. et al., Los Angeles County Superior Court Case No. 952953;

(6.) Rosenthal & Green, etc. v. Terrence P. Melcher, etc. et al., Los Angeles

County Superior Court Case No. 952954;

(7.) Jerome B. Rosenthal v. Doris Day Melcher, etc., et al., Los Angeles County Superior Court Case No. 958726.

COUNT FOURTEEN

I

In or around March of 1953, you negotiated for Mr. and Mrs. Martin Melcher an ostensible purchase of Federal Land Bank bonds with a face value of $3,000,000.00. The bonds were purchased on credit, with the Melchers delivering to the brokerage firm's agent a promissory note bearing 4 1/4 percent interest.

While purporting to represent the Melchers in this transaction, you secretly, and without the knowledge or consent of the Melchers, negotiated for your own account the purchase of $1,000,000.00 worth of the same kind of bonds. Your purported purchase was also on credit, however your promissory note bore an interest rate of only 3 1/2 percent. The 3/4 percent difference in interest rates

resulted in the Melchers having an actual out-of-pocket expense in excess of 400 percent more than your out-of-pocket expense during the five years in which payments were made on the notes.

WITHIN TEN (10) days after the service of this notice you shall serve a written answer as provided for by Rules 28, 31, 32 and 33 of the Rules of Procedure.

By order of Local Administrative Committee No. Two for the County of Los Angeles, made on October 31, 1972.

DATED: Dcember 6, 1972

(S) RICHARD M. DARBY
RICHARD M. DARBY

(S) SANFORD M. EHRMANN
SANFORD M. EHRMANN

(S) RICHARD R. TERZIAN
RICHARD R. TERZIAN

MEMBERS OF SAID COMMITTEE

APPENDIX 3

California Supreme Court "ORDER"
filed February 18, 1988 (final)
denial rehearing

SUPREME COURT

F I L E D

FEB 18 1988

Laurence P. Gill, Clerk

Deputy

No. L.A. 32260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEROME B. ROSENTHAL, Petitioner

v.

STATE BAR OF CALIFORNIA, Respondent

On July 13, 1987, this court issued its opinion in this case disbarring Petitioner and ordering that his name be stricken from the roll of attorneys effective thirty days after the filing of the opinion. On August 6, 1987, the court, in an order signed by Acting Chief Justice Panelli, granted an extension of time to September 11, 1987, within which to hear petitioner's petition for rehearing. (Cal. Rules of Court, Rule 24(a).) On September 2, 1987, the court, in an order signed by Chief

Justice Lucas, issued its order denying the petition for rehearing; no votes to rehear the matter were cast. Chief Justice Lucas previously recused himself in this matter at petitioner's request. In order to assure that there is no question regarding the propriety of that order, this order denying the petition for rehearing is issued to be effective nunc pro tunc as of September 2, 1987. In any event, the matter became final as of September 11, 1987, pursuant to California Rules of Court, Rule 27 (e), which states that "If no order is made before the decision becomes final as provided in subdivision (a) of rule 24, the petition shall be deemed denied . . . ." The court's jurisdiction in which to act on the petition for rehearing elapsed as of that date pursuant to the extension of time granted on August 6, 1987.

Our order disbarring petitioner thirty days after the filing of our opinion was never stayed. In any event, any delay in the effective date of disbarment due to the

court's retention of jurisdiction in order to consider the petition for rehearing ended on September 11, 1987, the last day to which time was extended in order for the court to consider the request for rehearing. Petitioner thus was disbarred as of September 11, 1987.

(S) JOHN A. ARGUELLES
ACTING CHIEF JUSTICE

I LAURENCE P. GILL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 18th day of February A.D. 1988.

Clerk

By (S) R. Barrow
Deputy Clerk

APPENDIX 4

Omitted, officially reported "OPINION" of California Supreme Court July 13, 1987, Jerome B. Rosenthal vs. State Bar of California, 43 C.3d 612, 238 Cal.Rptr. 377.

APPENDIX 5

"NOTICE OF APPEAL" to Supreme Court of the United States filed in the Supreme Court of California, February 29, 1988.

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

JEROME B. ROSENTHAL, Appellant, vs. THE STATE BAR OF CALIFORNIA, Appellee.	)	NO. LA 32260 [rec'd by Clerk, Cal.Sup.Ct. 11:03 a.m. February 28,1988]

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that JEROME B. ROSENTHAL, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the Order of the Supreme Court of the State of California (disbarring Appellant) as modified in denial of rehearing in final judgment entered on February 18, 1988.

This Appeal is taken pursuant to 28 U.S.C. Section 1257(2); this Notice of Appeal is given pursuant to Rule 11.3 of Rules of the Supreme Court of the United States.

DATED: February 24, 1988.

(S) JEROME B. ROSENTHAL
JEROME B. ROSENTHAL
Appellant Pro Se
6535 Wilshire Blvd.
Suite 800
Los Angeles, CA 90048
(213) 658-6411

APPENDIX 6

California Supreme Court Order May 27, 1987, recusing Chief Justice (Malcolm Lucas) from further participation in this proceeding

SUPREME COURT

F I L E D

MAY 27, 1987

Laurence P. Gill, Clerk

_____

Deputy

No. L.A. 32260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

JEROME B. ROSENTHAL

v.

STATE BAR OF CALIFORNIA

Petitioner's objection to the continued participation of Chief Justice Lucas having been presented to him, the Chief Justice on April 29, 1987, recused himself from further participation in this proceeding.

(S) Panelli J.
Acting Chief Justice

APPENDIX 7

California Supreme Court Order
August 6, 1987 extending time for granting,
denying rehearing to September 11 or the date
on which rehearing is granted or denied

SUPREME COURT

F I L E D

AUG 6, 1987

Laurence P. Gill, Clerk

Deputy

No. L.A. 32260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

JEROME B. ROSENTHAL

v.

STATE BAR OF CALIFORNIA

The time for granting or denying rehearing in the above cause is hereby extended to and including September 11, 1987 or the date upon which rehearing is either granted or denied.

(S) Panelli
Acting Chief Justice

APPENDIX 8

California Supreme Court Order
September 2, 1987, signed by (Malcolm) Lucas,
C.J., denying rehearing

ORDER DUE

September 11, 1987

ORDER DENYING REHEARING

L.A. No. 32260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT

F I L E D

SEP 2, 1987

L...P. Gill, Clerk

DEPUTY

JEROME B. ROSENTHAL,
Petitioner

v.

STATE BAR OF CALIFORNIA,
Respondent

Petition for rehearing DENIED.

(S) Lucas
Chief Justice